

AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. OXLEY

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Land Recycling Act of 1999”.

4 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

Sec. 2. Amendments to Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

TITLE I—LAND RECYCLING

Sec. 101. Findings.

Sec. 102. Cleanups pursuant to State response programs.

Sec. 103. Additions to National Priorities List.

Sec. 104. Innocent landowners.

Sec. 105. Bona fide prospective purchaser liability.

Sec. 106. Innocent governmental entities.

Sec. 107. Contiguous properties.

Sec. 108. Remedy selection.

Sec. 109. Brownfields grants.

**TITLE II—EXPENDITURES FROM THE HAZARDOUS SUBSTANCE
 SUPERFUND**

Sec. 201. Expenditures from the Hazardous Substance Superfund.

Sec. 202. Authorization of appropriations from general revenues.

Sec. 203. Completion of National Priorities List.

TITLE III—LIABILITY REFORM

Sec. 301. Liability relief for innocent parties.

Sec. 302. Clarifications of certain liability.

Sec. 303. Liability relief for small businesses, municipal solid waste, sewage sludge, municipal owners and operators, and de micromis contributors.

Sec. 304. Liability of response action contractors.

Sec. 305. Amendments to section 122.

Sec. 306. Clarification of liability for recycling transactions.

Sec. 307. Allocation.

Sec. 308. Standard for cleanup by dry cleaners.

1 **SEC. 2. AMENDMENTS TO COMPREHENSIVE ENVIRON-**
2 **MENTAL RESPONSE, COMPENSATION, AND LI-**
3 **ABILITY ACT OF 1980.**

4 Except as otherwise specifically provided, whenever in
5 this Act an amendment or repeal is expressed in terms
6 of an amendment to, or repeal of, a section or other provi-
7 sion of law, the reference shall be considered to be made
8 to a section or other provision of the Comprehensive Envi-
9 ronmental Response, Compensation, and Liability Act of
10 1980 (42 U.S.C. 9601 et seq.).

11 **TITLE I—LAND RECYCLING**

12 **SEC. 101. FINDINGS.**

13 (a) FINDINGS.—Congress finds the following:

14 (1) Brownfields are parcels of land that contain
15 or contained abandoned or under used commercial
16 or industrial facilities, the expansion or redevelop-
17 ment of which is complicated by the actual or poten-
18 tial presence of hazardous substances, pollutants, or
19 contaminants.

20 (2) Brownfields, which may number in the hun-
21 dreds of thousands nationwide, threaten the environ-
22 ment, devalue surrounding property, erode State and
23 local tax bases, and prevent job growth.

24 (3) The primary environmental reason that cur-
25 rent owners and prospective developers do not rede-
26 velop brownfields is their fear about the potential li-

1 ability under environmental laws associated with the
2 cleanup and redevelopment of these sites.

3 (4) Current Federal law poses a barrier to the
4 cleanup and redevelopment of brownfields, leading
5 instead to the development of so-called greenfields,
6 contributing to urban sprawl, creating infrastructure
7 problems, and reducing recreational and agricultural
8 opportunities.

9 (5) Cleanup and redevelopment of brownfields
10 will reduce environmental contamination, encourage
11 job growth, enhance State and local tax bases, and
12 curb the development of greenfields.

13 (6) Many States have enacted cleanup pro-
14 grams to address the brownfields problem by allow-
15 ing for the consideration of future land use in decid-
16 ing appropriate cleanup standards and providing
17 clear releases of liability upon completion of clean-
18 ups.

19 (7) State response programs have been very ef-
20 fective in promoting the cleanup and redevelopment
21 of brownfields while ensuring the adequate protec-
22 tion of human health and the environment.

23 (b) PURPOSES AND OBJECTIVES.—The purposes and
24 objectives of this title are—

1 (1) to increase significantly the pace of re-
2 response activities at contaminated sites by promoting
3 and encouraging the creation, development, and en-
4 hancement of State response programs; and

5 (2) to remove existing Federal barriers to the
6 cleanup of brownfield sites;

7 (3) to benefit the public health, welfare, and the
8 environment by cleaning up and returning contami-
9 nated sites to economically productive or other bene-
10 ficial uses; and

11 (4) to provide finality and certainty by insuring
12 that the President does not use certain authorities
13 to override State remediation decisions unless there
14 are exceptional circumstances.

15 **SEC. 102. CLEANUPS PURSUANT TO STATE RESPONSE PRO-**
16 **GRAMS.**

17 (a) PROHIBITION ON ENFORCEMENT.—Except as
18 otherwise provided in this section, neither the President
19 nor any other person (other than a State) may use any
20 authority of the Comprehensive Environmental Response,
21 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
22 et seq.) or section 7002(a)(1)(B) or section 7003 of the
23 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) to com-
24 mence an administrative or judicial action under either of
25 those Acts with respect to any release or threatened re-

1 lease at a facility that is, or has been, the subject of a
2 response action pursuant to a State program that meets
3 the requirements of subsection (b).

4 (b) STATE REQUIREMENTS.—The prohibition in sub-
5 section (a) applies with respect to a facility that is, or has
6 been, the subject of a response action pursuant to a State
7 program for undertaking response actions at facilities
8 where there is a release or threatened release of hazardous
9 substances if such program has been submitted to the Ad-
10 ministrator of the Environmental Protection Agency to-
11 gether with a certification by the State that—

12 (1) the State has enacted such program into
13 law,

14 (2) the State has committed the financial and
15 personnel resources necessary to carry out such pro-
16 gram,

17 (3) such program will be implemented in a
18 manner protective of human health and the environ-
19 ment, and

20 (4) such program includes meaningful opportu-
21 nities for public participation.

22 (c) LIMITATION ON PROHIBITION.—The prohibition
23 under subsection (a) and the exemption under subsection
24 (f) shall not apply with respect to any of the following:

1 (1) Any facility listed on the National Priorities
2 List, unless the Administrator, on a facility-by-facil-
3 ity basis and pursuant to an agreement with the
4 State concerned, makes a finding that a facility list-
5 ed on the National Priorities List is eligible to par-
6 ticipate in a State cleanup program meeting the re-
7 quirements of subsection (b).

8 (2) Any facility for which the Governor of a
9 State has requested Environmental Protection Agen-
10 cy assistance to perform a response action.

11 (3) Any facility owned or operated by a depart-
12 ment, agency, or instrumentality of the United
13 States.

14 (4) A release or threatened release to the extent
15 that a response action has been required pursuant to
16 an administrative order or judicial order or decree
17 entered into by the United States under any of the
18 following laws before the commencement of a re-
19 sponse action pursuant to a State program described
20 in subsection (a):

21 (A) The Comprehensive Environmental Re-
22 sponse, Compensation, and Liability Act of
23 1980 (42 U.S.C. 9601 et seq.).

24 (B) The Solid Waste Disposal Act (42
25 U.S.C. 6901 et seq.).

1 (C) The Federal Water Pollution Control
2 Act (33 U.S.C. 1251 et seq.).

3 (D) The Toxic Substances Control Act (15
4 U.S.C. 2601 et seq.).

5 (E) Title XIV of the Public Health Service
6 Act (commonly known as the Safe Drinking
7 Water Act) (42 U.S.C. 300f et seq.).

8 (5) A release or threatened release for which re-
9 sponse actions are immediately required to prevent
10 or mitigate a public health or environmental emer-
11 gency and for which the State is not responding in
12 a timely manner.

13 (d) PRIOR ACTIONS.—Nothing in this section shall
14 affect administrative or judicial action commenced prior
15 to the date of enactment of this section.

16 (e) PERMITS AND OTHER REQUIREMENTS.—(1) 18
17 months after enactment of this Act, Federal permit or per-
18 mit revisions shall not be required for the on-site portion
19 of response actions that are subject to the prohibition
20 under subsection (a). Nothing in this paragraph dimin-
21 ishes the application of substantive standards required by
22 law.

23 (2) Within 12 months after enactment of this Act and
24 after public notice and comment and consultation with
25 State Governors, the Administrator shall promulgate regu-

1 lations which streamline any reporting requirements con-
2 nected with implementation of substantive requirements of
3 Federal law and consistent with paragraph (1).

4 (f) ASSISTANCE TO STATES.—The Administrator
5 shall provide technical, financial, and other assistance to
6 States to establish and enhance State response programs.
7 The Administrator shall encourage the States to develop
8 risk sharing pools, indemnity pools, or insurance mecha-
9 nisms to provide financing for response actions under their
10 response programs.

11 (g) EFFECT OF RESPONSE.—Performance of a re-
12 sponse action pursuant to a State program under this sec-
13 tion shall not constitute an admission of liability under
14 any Federal, State, or local law or regulation or in any
15 citizens suit or other private action.

16 **SEC. 103. ADDITIONS TO NATIONAL PRIORITIES LIST.**

17 (a) ADDITIONS TO NPL.—Section 105 (42 U.S.C.
18 9605) is amended by adding at the end the following new
19 subsection:

20 “(h) ADDITIONS TO NPL.—(1) The President may
21 add a facility to the National Priorities List only after re-
22 questing and obtaining the concurrence of the Governor
23 of the State in which the facility is located. If the Governor
24 assures the President that the State is addressing, or will
25 address, the site under State authority, and the Governor

1 does not concur in the listing of the site, the President
2 shall not list the site.

3 “(2) Notwithstanding paragraph (1), the President
4 may add a facility to the National Priorities List if—

5 “(A) the release or threatened release affects
6 public health or the environment in more than one
7 State, unless the Governors of each such State fail
8 to concur, upon request by the President, in the list-
9 ing of the site; or

10 “(B) the President finds that the State where
11 the facility is located is a major potentially respon-
12 sible party at that facility.”.

13 (b) CROSS REFERENCE.—Subparagraph (B) of sec-
14 tion 105(a)(8) is amended by inserting after “shall revise
15 the list” the following: “, subject to subsection (h),”.

16 **SEC. 104. INNOCENT LANDOWNERS.**

17 (a) IN GENERAL.—Section 107 (42 U.S.C. 9607) is
18 amended by adding at the end the following new sub-
19 section:

20 “(o) INNOCENT LANDOWNERS.—

21 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
22 MENT.—A person who has acquired real property
23 shall have made all appropriate inquiry within the
24 meaning of subparagraph (B) of section 101(35) if
25 he establishes that, within 180 days prior to the

1 time of acquisition, an environmental site assess-
2 ment of the real property was conducted that meets
3 the requirements of this subsection.

4 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
5 SESSMENT.—For purposes of this subsection, the
6 term ‘environmental site assessment’ means an as-
7 sessment conducted in accordance with the stand-
8 ards set forth in the American Society for Testing
9 and Materials (ASTM) Standard E1527–94, titled
10 ‘Standard Practice for Environmental Site Assess-
11 ments: Phase I Environmental Site Assessment
12 Process’ or with alternative standards issued by rule
13 by the Administrator or promulgated or developed
14 by others and designated by rule by the Adminis-
15 trator. Before issuing or designating alternative
16 standards, the Administrator shall first conduct a
17 study of commercial and industrial practices con-
18 cerning environmental site assessments in the trans-
19 fer of real property in the United States. Any such
20 standards issued or designated by the Administrator
21 shall also be deemed to constitute commercially rea-
22 sonable and generally accepted standards and prac-
23 tices for purposes of this paragraph. In issuing or
24 designating any such standards, the Administrator

1 shall consider requirements governing each of the
2 following:

3 “(A) Interviews of owners, operators, and
4 occupants of the property to determine informa-
5 tion regarding the potential for contamination.

6 “(B) Review of historical sources as nec-
7 essary to determine previous uses and occupan-
8 cies of the property since the property was first
9 developed. For purposes of this subclause, the
10 term ‘historical sources’ means any of the fol-
11 lowing, if they are reasonably ascertainable: re-
12 corded chain of title documents regarding the
13 real property, including all deeds, easements,
14 leases, restrictions, and covenants, aerial photo-
15 graphs, fire insurance maps, property tax files,
16 USGS 7.5 minutes topographic maps, local
17 street directories, building department records,
18 zoning/land use records, and any other sources
19 that identify past uses and occupancies of the
20 property.

21 “(C) Determination of the existence of re-
22 corded environmental cleanup liens against the
23 real property which have arisen pursuant to
24 Federal, State, or local statutes.

1 “(D) Review of reasonably ascertainable
2 Federal, State, and local government records of
3 sites or facilities that are likely to cause or con-
4 tribute to contamination at the real property,
5 including, as appropriate, investigation reports
6 for such sites or facilities; records of activities
7 likely to cause or contribute to contamination at
8 the real property, including landfill and other
9 disposal location records, underground storage
10 tank records, hazardous waste handler and gen-
11 erator records and spill reporting records; and
12 such other reasonably ascertainable Federal,
13 State, and local government environmental
14 records which could reflect incidents or activi-
15 ties which are likely to cause or contribute to
16 contamination at the real property.

17 “(E) A visual site inspection of the real
18 property and all facilities and improvements on
19 the real property and a visual inspection of im-
20 mediately adjacent properties, including an in-
21 vestigation of any hazardous substance use,
22 storage, treatment, and disposal practices on
23 the property.

24 “(F) Any specialized knowledge or experi-
25 ence on the part of the defendant.

1 “(G) The relationship of the purchase
2 price to the value of the property if
3 uncontaminated.

4 “(H) Commonly known or reasonably as-
5 certainable information about the property.

6 “(I) The obviousness of the presence or
7 likely presence of contamination at the prop-
8 erty, and the ability to detect such contamina-
9 tion by appropriate investigation.

10 A record shall be considered to be ‘reasonably ascer-
11 tainable’ for purposes of this paragraph if a copy or
12 reasonable facsimile of the record is publicly avail-
13 able by request (within reasonable time and cost
14 constraints) and the record is practically reviewable.

15 “(3) MAINTENANCE OF INFORMATION.—No
16 presumption shall arise under paragraph (1) unless
17 the defendant has maintained a compilation of the
18 information reviewed and gathered in the course of
19 the environmental site assessment.”.

20 (b) CROSS REFERENCE.—Section 101(35)(B) (42
21 U.S.C. 9601(35)(B)) is amended by inserting after “all
22 appropriate inquiry” the following: “(as specified in sec-
23 tion 107(o))”.

1 **SEC. 105. BONA FIDE PROSPECTIVE PURCHASER LIABILITY.**

2 (a) LIABILITY.—Section 107 (42 U.S.C. 9607) is fur-
3 ther amended by adding at the end the following new sub-
4 sections:

5 “(p) BONA FIDE PROSPECTIVE PURCHASER.—(1)
6 Notwithstanding paragraphs (1) through (4) of subsection
7 (a), a person who does not impede the performance of a
8 response action or natural resource restoration at a facil-
9 ity shall not be liable to the extent liability at such facility
10 is based solely on paragraph (1) of subsection (a) for a
11 release or threat of release from the facility, and the per-
12 son is a bona fide prospective purchaser of the facility.

13 “(2) For purposes of this subsection, the term ‘bona
14 fide prospective purchaser’ means a person who acquires
15 ownership of a facility after the date of enactment of this
16 subsection, or a tenant of such a person, who can establish
17 each of the following by a preponderance of the evidence:

18 “(A) All active disposal of hazardous substances
19 at the facility occurred before that person acquired
20 the facility.

21 “(B) The person made all appropriate inquiry
22 into the previous ownership and uses of the facility
23 and its real property in accordance with generally
24 accepted commercial and customary standards and
25 practices. Standards described in subsection (o)(2)
26 (relating to innocent landowners) shall satisfy the

1 requirements of this subparagraph. In the case of
2 property for residential or other similar use, pur-
3 chased by a nongovernmental or noncommercial enti-
4 ty, a site inspection and title search that reveal no
5 basis for further investigation satisfy the require-
6 ments of this subparagraph.

7 “(C) The person provided all legally required
8 notices with respect to the discovery or release of
9 any hazardous substances at the facility.

10 “(D) The person exercised appropriate care
11 with respect to hazardous substances found at the
12 facility by taking reasonable steps to stop on-going
13 releases, prevent threatened future releases of haz-
14 ardous substances, and prevent or limit human or
15 natural resource exposure to hazardous substances
16 previously released into the environment.

17 “(E) The person provides full cooperation, as-
18 sistance, and facility access to persons authorized to
19 conduct response actions at the facility, including
20 the cooperation and access necessary for the installa-
21 tion, integrity, operation, and maintenance of any
22 complete or partial response action at the facility.

23 “(F) The person is not affiliated with any other
24 person liable for response costs at the facility,
25 through any direct or indirect familial relationship,

1 or any contractual, corporate, or financial relation-
2 ship other than that created by the instruments by
3 which title to the facility is conveyed or financed.

4 “(q) PROSPECTIVE PURCHASER AND WINDFALL
5 LIEN.—(1) In any case in which there are unrecovered
6 response costs at a facility for which an owner of the facil-
7 ity is not liable by reason of subsection (p), and the condi-
8 tions described in paragraph (2) are met, the United
9 States shall have a lien upon such facility for such unre-
10 covered costs. Such lien—

11 “(A) shall not exceed the increase in fair mar-
12 ket value of the property attributable to the response
13 action at the time of a subsequent sale or other dis-
14 position of property;

15 “(B) shall arise at the time costs are first in-
16 curred by the United States with respect to a re-
17 sponse action at the facility;

18 “(C) shall be subject to the requirements for
19 notice and validity established in paragraph (3) of
20 subsection (l); and

21 “(D) shall continue until the earlier of satisfac-
22 tion of the lien or recovery of all response costs in-
23 curred at the facility.

24 “(2) The conditions referred to in paragraph (1) are
25 the following:

1 “(A) A response action for which there are un-
2 recovered costs is carried out at the facility.

3 “(B) Such response action increases the fair
4 market value of the facility above the fair market
5 value of the facility that existed within 6 months be-
6 fore the response action was taken.”.

7 **SEC. 106. INNOCENT GOVERNMENTAL ENTITIES.**

8 Section 107 (42 U.S.C. 9607) is further amended by
9 adding at the end the following new subsection:

10 “(r) INNOCENT GOVERNMENTAL ENTITIES.—There
11 shall be no liability under subsection (a) for any State or
12 local government if such liability is based solely on—

13 “(A) the granting of a license or permit to con-
14 duct business; or

15 “(B) the State or local government’s status as
16 an owner or operator of the facility or vessel, and
17 the State or local government—

18 “(i) acquired the facility or vessel by es-
19 cheat or through any other involuntary transfer
20 or through the exercise of eminent domain, and

21 “(ii) establishes by a preponderance of the
22 evidence that it—

23 “(I) acquired the facility or vessel
24 after the disposal or placement of the haz-

1 ardous substances for which liability is al-
2 leged;

3 “(II) did not, by any act or omission,
4 cause or contribute to the release or
5 threatened release of such hazardous sub-
6 stances; and

7 “(III) exercised appropriate care with
8 respect to such hazardous substances tak-
9 ing into consideration the characteristics of
10 such hazardous substances, in light of all
11 relevant facts, circumstances, and generally
12 accepted good commercial and customary
13 standards and practices at the time of the
14 defendant’s acts or omissions.”.

15 **SEC. 107. CONTIGUOUS PROPERTIES.**

16 Section 107 (42 U.S.C. 9607) is further amended by
17 adding at the end the following new subsection:

18 “(s) CONTIGUOUS PROPERTIES.—(1) A person (other
19 than the United States or a department, agency, or instru-
20 mentality of the United States) who owns or operates real
21 property that is contiguous to or otherwise similarly situ-
22 ated with respect to real property on which there has been
23 a release or threatened release of a hazardous substance
24 and that is or may be contaminated by such release shall
25 not be liable under subsection (a) (1) or (2) by reason

1 of such ownership or operation solely by reason of such
2 contamination if such person—

3 “(A) did not cause, contribute to, or consent to
4 the release or threatened release;

5 “(B) provides full cooperation, assistance, and
6 facility access to persons authorized to conduct re-
7 sponse actions at the facility, including the coopera-
8 tion and access necessary for the installation, integ-
9 rity, operation, and maintenance of any complete or
10 partial response action at the facility; and

11 “(C) is not affiliated with any other person lia-
12 ble for response costs at the facility, through any di-
13 rect or indirect familial relationship, or any contrac-
14 tual, corporate, or financial relationship.

15 “(2) The President may issue an assurance of no en-
16 forcement action under this Act to any such person and
17 may grant any such person protection against cost recov-
18 ery and contribution actions pursuant to section 113(f)(2).
19 Such person may also petition the President to exclude
20 from the description of a National Priorities List site such
21 contiguous real property, if such property is or may be
22 contaminated solely by ground water that flows under
23 such property and is not used as a source of drinking
24 water. The President may grant such a petition pursuant
25 to such procedures as he deems appropriate.”.

1 **SEC. 108. REMEDY SELECTION.**

2 Section 121 (42 U.S.C. 9621) is amended as follows:

3 (1) By inserting the following before the period
4 at the end of the first sentence in subsection (b)(1):
5 “to the extent practicable, considering the nature
6 and timing of reasonably anticipated uses of land,
7 water, and other resources”.

8 (2) By adding after the first sentence in sub-
9 section (b)(1): “The preferences for treatment or
10 permanent solutions in this paragraph shall not
11 apply to a treatment option or permanent solution
12 that would increase risk to the community or to
13 workers’ health.”

14 (3) By striking “maximum” in the penultimate
15 sentence of subsection (b)(1).

16 (4) By striking “or is relevant and appropriate”
17 and “or relevant and appropriate” in subsection
18 (d)(2)(A).

19 (5) By striking “Level Goals” in subsection
20 (d)(2)(A) and inserting “Levels”.

21 (6) By striking “and water quality criteria es-
22 tablished under section 304 or 303 of the Clean
23 Water Act where such goals or criteria are relevant
24 and appropriate under the circumstances of the re-
25 lease of threatened release” in subsection (d)(2)(A)
26 and inserting “where such levels are relevant and

1 appropriate under the circumstances of the release
2 or threatened release, considering the timing of any
3 reasonably anticipated use of water as drinking
4 water and reasonable points of compliance”.

5 (7) In subsection (d)(2)(B) by striking clause
6 (i), striking “(ii)”, and redesignating subclauses (I)
7 through (III) as clauses (i) through (iii).

8 (8) By adding the following new subsection at
9 the end thereof:

10 “(g) RISK ASSESSMENT AND CHARACTERIZATION
11 PRINCIPLES.—Risk assessments and characterizations
12 conducted for remedial actions subject to this section, and
13 for other significant Federal actions under this Act,
14 shall—

15 “(1) provide scientifically objective assessments,
16 estimates, and characterizations which neither mini-
17 mize nor exaggerate the nature and magnitude of
18 risks to human health and the environment;

19 “(2) be based on the best available scientific
20 and technical information, including data on bio-
21 availability and site-specific information; and

22 “(3) be based on an analysis of the weight of
23 the scientific evidence that supports conclusions
24 about a problem’s potential risk to human health
25 and the environment.”.

1 **SEC. 109. BROWNFIELDS GRANTS.**

2 (a) IN GENERAL.—Title I (42 U.S.C. 9601 et seq.)
3 is amended by adding at the end the following:

4 **“SEC. 127. BROWNFIELDS GRANTS.**

5 “(a) DEFINITIONS.—In this section, the following
6 definitions apply:

7 “(1) ADMINISTRATIVE COST.—The term ‘ad-
8 ministrative cost’ does not include the cost of—

9 “(A) site inventories;

10 “(B) investigation and identification of the
11 extent of contamination;

12 “(C) design and performance of a response
13 action; or

14 “(D) monitoring of natural resources.

15 “(2) BROWNFIELD FACILITY.—

16 “(A) IN GENERAL.—The term ‘brownfield
17 facility’ means real property with respect to
18 which expansion, development, or redevelopment
19 is complicated by the presence or potential pres-
20 ence of a hazardous substance.

21 “(B) EXCLUDED FACILITIES.—The term
22 ‘brownfield facility’ does not include—

23 “(i) any portion of real property that
24 is the subject of an ongoing removal or
25 planned removal under section 104;

1 “(ii) any portion of real property that
2 is listed or has been proposed for listing on
3 the National Priorities List;

4 “(iii) any portion of real property with
5 respect to which a cleanup is proceeding
6 under a permit, an administrative order, or
7 a judicial consent decree entered into by
8 the United States or an authorized State
9 under this Act, the Solid Waste Disposal
10 Act (42 U.S.C. 6901 et seq.), the Federal
11 Water Pollution Control Act (33 U.S.C.
12 1251 et seq.), the Toxic Substances Con-
13 trol Act (15 U.S.C. 2601 et seq.), or the
14 Safe Drinking Water Act (42 U.S.C. 300f
15 et seq.);

16 “(iv) a facility that is owned or oper-
17 ated by a department, agency, or instru-
18 mentality of the United States, except a
19 facility located on lands held in trust for
20 an Indian tribe; or

21 “(v) a portion of a facility for which
22 assistance for response activity has been
23 obtained under subtitle I of the Solid
24 Waste Disposal Act (42 U.S.C. 6991 et
25 seq.) from the Leaking Underground Stor-

1 age Tank Trust Fund established under
2 section 9508 of the Internal Revenue Code
3 of 1986.

4 “(3) ELIGIBLE ENTITY.—

5 “(A) IN GENERAL.—The term ‘eligible en-
6 tity’ means—

7 “(i) a State or a political subdivision
8 of a State, including—

9 “(I) a general purpose unit of
10 local government; and

11 “(II) a regional council or group
12 of general purpose units of local gov-
13 ernment;

14 “(ii) a redevelopment agency that is
15 chartered or otherwise sanctioned by a
16 State or other unit of government; and

17 “(iii) an Indian tribe.

18 “(B) EXCLUDED ENTITIES.—The term ‘el-
19 igible entity’ does not include any entity that is
20 not in full compliance with the requirements of
21 an administrative order, judicial consent decree,
22 or closure plan under a permit which has been
23 issued or entered into by the United States or
24 an authorized State under this Act, the Solid
25 Waste Disposal Act (42 U.S.C. 6901 et seq.),

1 the Federal Water Pollution Control Act (33
2 U.S.C. 1251 et seq.), the Toxic Substances
3 Control Act (15 U.S.C. 2601 et seq.), or the
4 Safe Drinking Water Act (42 U.S.C. 300f et
5 seq.) with respect to the real property or por-
6 tion thereof which is the subject of the order,
7 judicial consent decree, or closure plan.

8 “(b) BROWNFIELD ASSESSMENT GRANT PRO-
9 GRAM.—

10 “(1) ESTABLISHMENT OF PROGRAM.—The
11 President shall establish a program to provide
12 grants to eligible entities for inventory and assess-
13 ment of brownfield facilities.

14 “(2) ASSISTANCE FOR SITE ASSESSMENT.—On
15 approval of an application made by an eligible entity,
16 the President may make grants to the eligible entity
17 to be used for developing an inventory and con-
18 ducting an assessment of 1 or more brownfield fa-
19 cilities.

20 “(3) APPLICATIONS.—

21 “(A) IN GENERAL.—Any eligible entity
22 may submit an application to the President, in
23 such form as the President may require, for a
24 grant under this subsection for 1 or more
25 brownfield facilities.

1 “(B) APPLICATION REQUIREMENTS.—An
2 application for a grant under this subsection
3 shall include information relevant to the rank-
4 ing criteria established under paragraph (4) for
5 the facility or facilities for which the grant is
6 requested.

7 “(4) RANKING CRITERIA.—The President shall
8 establish a system for ranking grant applications
9 submitted under this subsection that includes the
10 following criteria:

11 “(A) The demonstrated need for Federal
12 assistance.

13 “(B) The extent to which a grant will
14 stimulate the availability of other funds for en-
15 vironmental remediation and subsequent rede-
16 velopment of the area in which the brownfield
17 facilities are located.

18 “(C) The estimated extent to which a
19 grant would facilitate the identification of or fa-
20 cilitate a reduction in health and environmental
21 risks.

22 “(D) The potential to stimulate economic
23 development of the area, such as the following:

1 “(i) The relative increase in the esti-
2 mated fair market value of the area as a
3 result of any necessary response action.

4 “(ii) The potential of a grant to cre-
5 ate new or expand existing business and
6 employment opportunities on completion of
7 any necessary response action.

8 “(iii) The estimated additional tax
9 revenues expected to be generated by eco-
10 nomic redevelopment in the area in which
11 a brownfield facility is located.

12 “(E) The financial involvement of the
13 State and local government in any response ac-
14 tion planned for a brownfield facility and the
15 extent to which the response action and the
16 proposed redevelopment is consistent with any
17 applicable State or local community economic
18 development plan.

19 “(F) The extent to which the site assess-
20 ment and subsequent development involves the
21 active participation and support of the local
22 community.

23 “(5) MAXIMUM GRANT AMOUNT PER FACIL-
24 ITY.—A grant made to an eligible entity under this

1 subsection shall not exceed \$200,000 with respect to
2 any brownfield facility covered by the grant.

3 “(c) BROWNFIELD REMEDIATION GRANT PRO-
4 GRAM.—

5 “(1) ESTABLISHMENT OF PROGRAM.—The
6 President shall establish a program to provide
7 grants to eligible entities to be used for capitaliza-
8 tion of revolving loan funds for remedial actions at
9 brownfield facilities.

10 “(2) ASSISTANCE FOR SITE REMEDIATION.—
11 Upon approval of an application made by an eligible
12 entity, the President may make grants to the eligible
13 entity to be used for establishing a revolving loan
14 fund. Any fund established using such grants shall
15 be used to make loans to a State, a site owner, or
16 a site developer for the purpose of carrying out re-
17 medial actions at 1 or more brownfield facilities.

18 “(3) APPLICATIONS.—

19 “(A) IN GENERAL.—Any eligible entity
20 may submit an application to the President, in
21 such form as the President may require, for a
22 grant under this subsection.

23 “(B) APPLICATION REQUIREMENTS.—An
24 application under this section shall include in-

1 formation relevant to the ranking criteria estab-
2 lished under paragraph (4).

3 “(4) RANKING CRITERIA.—The President shall
4 establish a system for ranking grant applications
5 submitted under this subsection that includes the
6 following criteria:

7 “(A) The adequacy of the financial con-
8 trols and resources of the eligible entity to ad-
9 minister a revolving loan fund in accordance
10 with this title.

11 “(B) The ability of the eligible entity to
12 monitor the use of funds provided to loan re-
13 cipients under this title.

14 “(C) The ability of the eligible entity to en-
15 sure that a remedial action funded by the grant
16 will be conducted under the authority of a State
17 cleanup program that ensures that the remedial
18 action is protective of human health and the en-
19 vironment.

20 “(D) The ability of the eligible entity to
21 ensure that any cleanup funded under this Act
22 will comply with all laws that apply to the
23 cleanup.

24 “(E) The need of the eligible entity for fi-
25 nancial assistance to clean up brownfield sites

1 that are the subject of the application, taking
2 into consideration the financial resources avail-
3 able to the eligible entity.

4 “(F) The ability of the eligible entity to
5 ensure that the applicants repay the loans in a
6 timely manner.

7 “(G) The plans of the eligible entity for
8 using the grant to stimulate economic develop-
9 ment or creation of recreational areas on com-
10 pletion of the cleanup.

11 “(H) The plans of the eligible entity for
12 using the grant to stimulate the availability of
13 other funds for environmental remediation and
14 subsequent redevelopment of the area in which
15 the brownfield facilities are located.

16 “(I) The plans of the eligible entity for
17 using the grant to facilitate a reduction of
18 health and environmental risks.

19 “(J) The plans of the eligible entity for
20 using the grant for remediation and subsequent
21 development that involve the active participa-
22 tion and support of the local community.

23 “(5) MAXIMUM GRANT AMOUNT.—A grant
24 made to an eligible entity under this subsection may
25 not exceed \$1,000,000.

1 “(d) GENERAL PROVISIONS.—

2 “(1) PROHIBITION.—No part of a grant under
3 this section may be used for the payment of pen-
4 alties, fines, or administrative costs.

5 “(2) AUDITS.—The President shall audit an ap-
6 propriate number of grants made under subsections
7 (b) and (c) to ensure that funds are used for the
8 purposes described in this section.

9 “(3) AGREEMENTS.—

10 “(A) TERMS AND CONDITIONS.—Each
11 grant made under this section shall be subject
12 to an agreement that—

13 “(i) requires the eligible entity to
14 comply with all applicable Federal and
15 State laws;

16 “(ii) requires the eligible entity to use
17 the grant exclusively for the purposes spec-
18 ified in subsection (b)(2) or (c)(2);

19 “(iii) in the case of an application by
20 a State under subsection (c)(3), requires
21 payment by the State of a matching share,
22 of at least 50 percent of the amount of the
23 grant, from other sources of funding;

24 “(iv) requires that grants under this
25 section will not supplant State or local

1 funds normally provided for the purposes
2 specified in subsection (b)(2) or (c)(2); and
3 “(v) contains such other terms and
4 conditions as the President determines to
5 be necessary to ensure proper administra-
6 tion of the grants.

7 “(B) LIMITATION.—The President shall
8 not place terms or conditions on grants made
9 under this section other than the terms and
10 conditions specified in subparagraph (A).

11 “(4) LEVERAGING.—An eligible entity that re-
12 ceives a grant under this section may use the funds
13 for part of a project at a brownfield facility for
14 which funding is received from other sources, includ-
15 ing other Federal sources, but the grant shall be
16 used only for the purposes described in subsection
17 (b)(2) or (c)(2).

18 “(e) APPROVAL.—

19 “(1) INITIAL GRANT.—Before the expiration of
20 the fourth quarter of the first fiscal year following
21 the date of the enactment of this section, the Presi-
22 dent shall make grants under this section to eligible
23 entities and States that submit applications, before
24 the expiration of the second quarter of such year,
25 that the President determines have the highest

1 rankings under the ranking criteria established
2 under subsection (b)(4) or (c)(4).

3 “(2) SUBSEQUENT GRANTS.—Beginning with
4 the second fiscal year following the date of enact-
5 ment of this section, the President shall make an an-
6 nual evaluation of each application received during
7 the prior fiscal year and make grants under this sec-
8 tion to eligible entities and States that submit appli-
9 cations during the prior year that the President de-
10 termines have the highest rankings under the rank-
11 ing criteria established under subsection (b)(4) or
12 (c)(4).

13 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
14 is authorized to be appropriated to carry out this section
15 such sums as may be necessary. Such funds shall remain
16 available until expended.”.

17 **TITLE II—EXPENDITURES FROM**
18 **THE HAZARDOUS SUBSTANCE**
19 **SUPERFUND**

20 **SEC. 201. EXPENDITURES FROM THE HAZARDOUS SUB-**
21 **STANCE SUPERFUND.**

22 (a) EXPENDITURES.—Section 111 (42 U.S.C. 9611)
23 is amended—

24 (1) by redesignating subsections (f) and (g) as
25 subsections (g) and (h), respectively; and

1 (2) by striking subsections (a), (b), (c), (d), and
2 (e) and inserting the following:

3 “(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE
4 SUPERFUND.—

5 “(1) SUBSECTION (b) EXPENDITURES.—The
6 following amounts of amounts appropriated to the
7 Hazardous Substance Superfund after January 1,
8 2000, pursuant to section 9507(b) of the Internal
9 Revenue Code of 1986, and of amounts credited
10 under section 9602(b) of such Code with respect to
11 those appropriated amounts, shall be available for
12 the purposes specified in subsection (b):

13 “(A) \$250,000,000 for fiscal year 2000.

14 “(B) \$250,000,000 for fiscal year 2001.

15 “(C) \$250,000,000 for fiscal year 2002.

16 “(D) \$250,000,000 for fiscal year 2003.

17 “(E) \$250,000,000 for fiscal year 2004.

18 Such funds shall remain available until expended.

19 “(2) SUBSECTIONS (c) AND (d) EXPENDI-
20 TURES.—There is authorized to be appropriated
21 from the Hazardous Substance Superfund estab-
22 lished pursuant to section 9507(b) of the Internal
23 Revenue Code of 1986 for the purposes specified in
24 subsections (c) and (d) of this section not more
25 than—

1 “(A) \$1,500,000,000 for fiscal year 2000;

2 “(B) \$1,500,000,000 for fiscal year 2001;

3 “(C) \$1,500,000,000 for fiscal year 2002;

4 “(D) \$1,400,000,000 for fiscal year 2003;

5 and

6 “(E) \$1,350,000,000 for fiscal year 2004.

7 “(b) PAYMENTS RELATED TO CERTAIN REDUC-
8 TIONS, LIMITATIONS, AND EXEMPTIONS.—

9 “(1) FUNDING OF EXEMPT PARTY AND FUND
10 SHARE.—The President may use amounts in the
11 Fund made available by subsection (a)(1) for fund-
12 ing the equitable share of liability attributable to ex-
13 empt parties under section 107(y) and obligations
14 incurred by the President to pay a Fund share or
15 to reimburse parties for costs incurred in excess of
16 the parties’ allocated shares under section 129.

17 “(2) LIMITATIONS.—

18 “(A) FUNDING.—Amounts made available
19 by subsection (a)(1) for the purposes of this
20 subsection shall not exceed the following:

21 “(i) \$250,000,000 for fiscal year
22 2000.

23 “(ii) \$250,000,000 for fiscal year
24 2001.

1 “(iii) \$250,000,000 for fiscal year
2 2002.

3 “(iv) \$250,000,000 for fiscal year
4 2003.

5 “(v) \$250,000,000 for fiscal year
6 2004.

7 “(B) ELIGIBLE COSTS.—No funds made
8 available under paragraph (1) may be used for
9 payment of, or reimbursement for, any portion
10 of attorneys’ fees that do not constitute nec-
11 essary costs of response consistent the national
12 contingency plan.

13 “(C) ADDITIONAL PURPOSES.—

14 “(i) IN GENERAL.—If, in any of fiscal
15 years 2000 through 2004, the Adminis-
16 trator does not have available for obliga-
17 tion for the purposes of subsections (c) and
18 (d) the amount specified for the fiscal year
19 in clause (iii), the Administrator, subject
20 to clause (ii), may use funds provided
21 under subsection (a)(1) for such purposes.

22 “(ii) LIMITATION.—The total amount
23 of funds provided under subsection (a)(1)
24 that the Administrator may use for the
25 purposes of subsections (c) and (d) may

1 not exceed the amount specified for the fis-
2 cal year in clause (iii) less the amount
3 which (but for this subparagraph) would
4 be available to the Administrator in such
5 fiscal year for such purposes.

6 “(iii) AMOUNTS.—The amounts speci-
7 fied in this clause are \$1,500,000,000 for
8 each of fiscal years 2000 through 2002,
9 \$1,400,000,000 for fiscal year 2003, and
10 \$1,350,000,000 for fiscal year 2004.

11 “(c) RESPONSE, REMOVAL, AND REMEDIATION.—
12 The President may use amounts in the Fund appropriated
13 under subsection (a)(2) for costs of response, removal, and
14 remediation (and administrative costs directly related to
15 such costs), including the following:

16 “(1) GOVERNMENT RESPONSE COSTS.—Pay-
17 ment of governmental response costs incurred pursu-
18 ant to section 104, including costs incurred pursuant
19 to the Intervention on the High Seas Act (33 U.S.C.
20 1471 et seq.).

21 “(2) PRIVATE RESPONSE COST CLAIMS.—Pay-
22 ment of any claim for necessary response costs in-
23 curred by any other person as a result of carrying
24 out the national contingency plan established under
25 section 105, if such costs are approved under such

1 plan, are reasonable in amount based on open and
2 free competition or fair market value for similar
3 available goods and services, and are certified by the
4 responsible Federal official.

5 “(3) ACQUISITION COSTS UNDER SECTION
6 104(j).—The costs incurred by the President in ac-
7 quiring real estate or interests in real estate under
8 section 104(j) (relating to acquisition of property).

9 “(4) STATE AND LOCAL GOVERNMENT REIM-
10 BURSEMENT.—Reimbursement to States and local
11 governments under section 123; except that during
12 any fiscal year not more than 0.1 percent of the
13 total amount appropriated under subsection (a)(2)
14 may be used for such reimbursements.

15 “(5) CONTRACTS AND COOPERATIVE AGREE-
16 MENTS.—Payment for the implementation of any
17 contract or cooperative agreement under section
18 104(d).

19 “(d) ADMINISTRATION, OVERSIGHT, RESEARCH, AND
20 OTHER COSTS.—The President may use amounts in the
21 Fund appropriated under subsection (a)(2) for the fol-
22 lowing costs (and administrative costs directly related to
23 such costs):

24 “(1) INVESTIGATION AND ENFORCEMENT.—The
25 costs of identifying, investigating, and taking en-

1 enforcement action against releases of hazardous sub-
2 stances.

3 “(2) OVERHEAD.—

4 “(A) IN GENERAL.—The costs of providing
5 services, equipment, and other overhead related
6 to the purposes of this Act and section 311 of
7 the Federal Water Pollution Control Act and
8 needed to supplement equipment and services
9 available through contractors and other non-
10 Federal entities.

11 “(B) DAMAGE ASSESSMENT CAPABILITY.—
12 The costs of establishing and maintaining dam-
13 age assessment capability for any Federal agen-
14 cy involved in strike forces, emergency task
15 forces, or other response teams under the Na-
16 tional Contingency Plan.

17 “(3) EMPLOYEE SAFETY PROGRAMS.—The cost
18 of maintaining programs otherwise authorized by
19 this Act to protect the health and safety of employ-
20 ees involved in response to hazardous substance re-
21 leases.

22 “(4) GRANTS FOR TECHNICAL ASSISTANCE.—
23 The cost of grants under section 117(e) (relating to
24 public participation grants for technical assistance).

1 “(5) ATSDR ACTIVITIES.—Any costs incurred
2 in accordance with subsection (m) of this section (re-
3 lating to ATSDR) and section 104(i), including the
4 costs of epidemiologic and laboratory studies, public
5 health assessments, and other activities authorized
6 by section 104(i).

7 “(6) EVALUATION COSTS UNDER PETITION
8 PROVISIONS OF SECTION 105(d).—Costs incurred by
9 the President in evaluation facilities pursuant to pe-
10 titions under section 105(d) (relating to petitions for
11 assessment of release).

12 “(7) CONTRACT COSTS UNDER SECTION
13 104(a)(1).—The costs of contracts or arrangements
14 entered into under section 104(a)(1) to oversee and
15 review the conduct of remedial investigations and
16 feasibility studies undertaken by persons other than
17 the President and the costs of appropriate Federal
18 and State oversight of remedial activities at National
19 Priorities List sites resulting from consent orders or
20 settlement agreements.

21 “(8) RESEARCH, DEVELOPMENT, AND DEM-
22 ONSTRATION COSTS UNDER SECTION 311.—The cost
23 of carrying out section 311 (relating to research, de-
24 velopment, and demonstration).

1 “(9) AWARDS UNDER SECTION 109.—The costs
2 of any awards granted under section 109(d) (relat-
3 ing to providing information concerning violations).

4 “(10) COMPREHENSIVE STATE GROUND WATER
5 PROTECTION PLANS.—Costs of providing assistance
6 to States to develop comprehensive State ground
7 water protection plans to the extent such costs do
8 not exceed \$3,000,000 in a fiscal year.

9 “(e) OTHER LIMITATIONS.—

10 “(1) LIMITATIONS ON PAYMENTS OF CLAIMS.—
11 Claims against or presented to the Fund shall not
12 be valid or paid in excess of the total unobligated
13 balance in the Fund at any one time. Such claims
14 become valid and are payable only when additional
15 money is collected, appropriated, or otherwise added
16 to the Fund. Should the total claims outstanding at
17 any time exceed the current balance of the Fund,
18 the President shall pay such claims, to the extent
19 authorized under this section, in full in the order in
20 which they were finally determined.

21 “(2) REMEDIAL ACTIONS AT FEDERALLY
22 OWNED FACILITIES.—No money in the Fund shall
23 be available for costs of remedial action, other than
24 costs specified in subsection (d), with respect to fed-
25 erally owned facilities; except that money in the

1 Fund shall be available for the provision of alter-
2 native water supplies (including the reimbursement
3 of costs incurred by a municipality) in any case in-
4 volving ground water contamination outside the
5 boundaries of a federally owned facility in which the
6 federally owned facility is not the only potentially re-
7 sponsible party.

8 “(3) REMEDIAL ACTIONS AT FACILITIES NOT
9 LISTED ON NPL.—No money in the Fund shall be
10 available for response actions that are not removal
11 actions under section 101(23) with respect to any
12 facility that is not listed on the National Priorities
13 List.”.

14 (b) ADDITIONAL AMENDMENTS.—

15 (1) SECTION 111.—Section 111 (42 U.S.C.
16 9611) is further amended by striking subsections (j)
17 and (n).

18 (2) SECTION 107.—Section 107 (42 U.S.C.
19 9607) is amended by striking subsection (k).

20 (c) CONFORMING AMENDMENTS.—Section 112 (42
21 U.S.C. 9612) is amended—

22 (1) in subsection (a) by striking “111(a)” and
23 inserting ““111(c)””; and

24 (2) by striking subsection (f).

1 **SEC. 202. AUTHORIZATION OF APPROPRIATIONS FROM**
2 **GENERAL REVENUES.**

3 (a) AUTHORIZATION.—Section 111(p)(1) (42 U.S.C.
4 9611(p)(1)) is amended to read as follows:

5 “(1) IN GENERAL.—There is authorized to be
6 appropriated, out of any money in the Treasury not
7 otherwise appropriated, to the Hazardous Substance
8 Superfund such sums as may be necessary for each
9 of fiscal years 2000 through 2004.”.

10 (b) REPEAL OF DUPLICATIVE AUTHORIZATION.—
11 Subsection (b) of section 517 of the Superfund Amend-
12 ments and Reauthorization Act of 1986 (26 U.S.C. 9507
13 note) is hereby repealed.

14 (c) CONFORMING AMENDMENT.—Section 9507(a)(2)
15 of the Internal Revenue Code of 1986 is amended by strik-
16 ing “section 517(b) of the Superfund Revenue Act of
17 1986” and inserting “section 111(p) of the Comprehensive
18 Environmental Response, Compensation, and Liability Act
19 of 1980 (42 U.S.C. 9611(p))”.

20 **SEC. 203. COMPLETION OF NATIONAL PRIORITIES LIST.**

21 (a) STUDY OF 10-YEAR FUNDING NEEDS FOR IM-
22 PLEMENTING CERCLA.—There is authorized to be ap-
23 propriated \$1,000,000 for an independent analysis of the
24 projected 10-year costs to the Environmental Protection
25 Agency of implementing the programs authorized by the
26 Comprehensive Environmental Response, Compensation,

1 and Liability Act of 1980. Such analysis shall include esti-
2 mates of annual and cumulative costs over the next 10
3 years associated with administering such Act by the Envi-
4 ronmental Protection Agency, shall identify sources of un-
5 certainty in the estimates, and shall be completed by Jan-
6 uary 1, 2001.

7 (b) BREAKDOWN OF COSTS.—The study referred to
8 in subsection (b) shall include estimates of the following:

9 (1) Costs for completion of all non-Federal fa-
10 cilities currently on the National Priorities List.

11 (2) Costs for completion of all Federal facilities
12 currently on the National Priorities List.

13 (3) Costs associated with those non-Federal
14 sites which the Administrator of the Environmental
15 Protection Agency expects to be added to the Na-
16 tional Priorities List over the next 10 years.

17 (4) Costs associated with those Federal facili-
18 ties which the Administrator expects to be added to
19 the National Priorities List over the next 10 years.

20 (5) Costs for operations and maintenance at fa-
21 cilities currently on, or anticipated to be added over
22 the next 10 years to, the National Priorities List.

23 (6) Costs associated with reviews of remedies
24 under section 121(c) of the Comprehensive Environ-

1 mental Response, Compensation, and Liability Act
2 of 1980, and any follow-up activities.

3 (7) Costs for removal activities.

4 (c) ORGANIZATIONS TO CONDUCT STUDY.—The cost
5 analysis under subsection (a) shall be conducted by a neu-
6 tral, nongovernmental organization with expertise in the
7 Comprehensive Environmental Response, Compensation,
8 and Liability Act of 1980. In conducting the analysis, the
9 nongovernmental organization shall collect relevant infor-
10 mation from experts and other interested persons, includ-
11 ing experts in public budgeting and accounting.

12 **TITLE III—LIABILITY REFORM**

13 **SEC. 301. LIABILITY RELIEF FOR INNOCENT PARTIES.**

14 (a) AMENDMENTS.—Section 107(b) (42 U.S.C.
15 9607(b)) is amended—

16 (1) by redesignating paragraphs (1) through
17 (4) as subparagraphs (A) through (D), respectively;

18 (2) by striking “(b) There shall be” and insert-
19 ing the following:

20 “(b) DEFENSES TO LIABILITY.—

21 “(1) IN GENERAL.—There shall be”; and

22 (3) by adding at the end the following:

23 “(2) LIABILITY RELIEF FOR INNOCENT PAR-
24 TIES.—

1 “(A) RECIPIENTS OF PROPERTY BY IN-
2 HERITANCE OR BEQUEST.—There shall be no li-
3 ability under subsection (a) for a person whose
4 liability is based solely on the person’s status as
5 an owner or operator of a facility or vessel and
6 who can establish by a preponderance of the
7 evidence that the person meets the require-
8 ments of paragraph (4) and that the person ac-
9 quired the property by inheritance or bequest.

10 “(B) RECIPIENTS OF PROPERTY BY CHARI-
11 TABLE DONATION.—Liability under subsection
12 (a) shall be limited to the lesser of the fair mar-
13 ket value of the facility or vessel and the actual
14 proceeds of the sale of the facility for a person
15 whose liability is based solely on the person’s
16 status as an owner or operator of the facility or
17 vessel and who can establish by a preponder-
18 ance of the evidence that the person meets the
19 requirements of paragraph (4) and that the
20 person holding title, either outright or in trust,
21 to the vessel or facility is an organization de-
22 scribed in section 501(c)(3) of the Internal Rev-
23 enue Code of 1986 and exempt from tax under
24 section 501(a) of such Code and holds such title
25 as a result of a charitable donation that quali-

1 fies under section 170, 2055, or 2522 of such
2 Code.

3 “(C) OWNERS OR OPERATORS OF RIGHTS-
4 OF-WAY.—There shall be no liability under sub-
5 section (a) for a person whose liability is based
6 solely on ownership or operation of a road,
7 street, or other right-of-way or public transpor-
8 tation route (other than railroad rights-of-way
9 and railroad property) over which hazardous
10 substances are transported if such person can
11 establish by a preponderance of the evidence
12 that the person did not, by any act or omission,
13 cause or contribute to the release or threatened
14 release.

15 “(D) RAILROAD OWNERS OR OPERATORS
16 OF SPUR TRACK.—There shall be no liability
17 under subsection (a) for a person whose liability
18 is based solely on the status of the person as
19 a railroad owner or railroad operator of a spur
20 track, including a spur track over land subject
21 to an easement, to a facility that is owned or
22 operated by a person that is not affiliated with
23 the railroad owner or operator if the railroad
24 owner or operator can establish by a preponder-
25 ance of the evidence that—

1 “(i) the spur track provides access to
2 a main line or branch line track that is
3 owned or operated by the railroad owner or
4 operator;

5 “(ii) the spur track is 10 miles long or
6 less; and

7 “(iii) the railroad owner or operator
8 did not cause or contribute to a release or
9 threatened release of the hazardous sub-
10 stances for which liability is alleged under
11 subsection (a).

12 “(E) CONSTRUCTION CONTRACTORS.—
13 There shall be no liability under subsection (a)
14 for a person who is a construction contractor
15 (other than a response action contractor cov-
16 ered by section 119) if such person can estab-
17 lish by a preponderance of the evidence that—

18 “(i) the person’s liability is based sole-
19 ly on construction activities that were spe-
20 cifically directed by and carried out in ac-
21 cordance with a contract with an owner or
22 operator of the facility;

23 “(ii) the person did not know or have
24 reason to know of the presence of haz-
25 ardous substances at the facility concerned

1 before beginning construction activities;
2 and

3 “(iii) the person exercised appropriate
4 care with respect to the hazardous sub-
5 stances discovered in the course of per-
6 forming the construction activity, including
7 precautions against foreseeable acts of
8 third parties, taking into consideration the
9 characteristics of such hazardous sub-
10 stances, in light of all relevant facts, cir-
11 cumstances, and generally accepted good
12 commercial and customary standards and
13 practices at the time of the person’s acts
14 or omissions.

15 “(3) APPROPRIATE CARE.—

16 “(A) SITE-SPECIFIC BASIS.—The deter-
17 mination whether or not a person has exercised
18 appropriate care with respect to hazardous sub-
19 stances within the meaning of paragraph (4)(C)
20 shall be made on a site-specific basis taking
21 into consideration the characteristics of the haz-
22 ardous substances, in light of all relevant facts,
23 circumstances, and generally accepted good
24 commercial and customary standards and prac-

1 tices at the time of the defendant's acts or
2 omissions.

3 “(B) SAFE HARBOR.—A person shall be
4 deemed to have exercised appropriate care with-
5 in the meaning of paragraph (4)(C) if—

6 “(i) the person took reasonable steps
7 to stop any continuing release, prevent any
8 threatened future release, and prevent or
9 limit human or natural resource exposure
10 to any previously released hazardous sub-
11 stance, or

12 “(ii) in any case in which the release
13 or threatened release of hazardous sub-
14 stances is the subject of a response action
15 by persons authorized to conduct the re-
16 sponse action at the facility or vessel, the
17 person provides access for and all reason-
18 able cooperation with the response action.

19 “(4) REQUIREMENTS.—The requirements re-
20 ferred to in paragraph (2)(A) and (B) are that a
21 person's liability is based solely on the person's sta-
22 tus as an owner or operator of a facility or vessel
23 and that the person can establish by a preponder-
24 ance of the evidence that—

1 “(A) the person acquired the facility or
2 vessel after the disposal or placement of the
3 hazardous substances for which liability is al-
4 leged under subsection (a);

5 “(B) the person did not, by any act or
6 omission, cause or contribute to the release or
7 threatened release of such hazardous sub-
8 stances; and

9 “(C) the person exercised appropriate care
10 with respect to such hazardous substances.

11 “(5) TREATMENT OF NON-LIABLE PARTIES.—

12 The Administrator shall seek to minimize the admin-
13 istrative and legal burdens on parties that are not
14 liable pursuant to this section. To the extent prac-
15 ticable, the Administrator shall—

16 “(A) inform such parties that they are ex-
17 empted from liability pursuant to this section,
18 and offer them written assurances establishing
19 their exempt status; and

20 “(B) eliminate or minimize any need for
21 such parties to retain legal counsel in connec-
22 tion with administrative or legal proceedings
23 concerning the facility at issue.”.

24 (b) CONFORMING AMENDMENTS.—(1) Section
25 101(35) (42 U.S.C. 9601(35)) is amended by striking

1 “section 107(b)(3)” each place it appears and inserting
2 “section 107(b)(1)(C)”.

3 (2) Section 119(b)(1) (42 U.S.C. 9619(b)(1)) is
4 amended by striking “section 107(b)(3)” and inserting
5 “section 107(b)(1)(C)”.

6 **SEC. 302. CLARIFICATIONS OF CERTAIN LIABILITY.**

7 (a) AMOUNT OF LIABILITY.—Section 107(c)(3) (42
8 U.S.C. 9607(c)(3)) is amended in the first sentence by
9 striking “at least equal to,” and all that follows through
10 the end of the sentence and inserting “up to three times
11 the amount of such response costs.”.

12 (b) CLARIFICATION OF COMMON CARRIER LIABIL-
13 ITY.—Section 107(b)(1)(C), as so redesignated by section
14 301(a) of this Act, is amended by striking “from a pub-
15 lished tariff and acceptance for” and inserting “exclusively
16 from a contract for”.

17 (c) OTHER CLARIFICATIONS.—Section 107(a) (42
18 U.S.C. 9607(a)) is amended as follows:

19 (1) In paragraph (1), by striking “and” and in-
20 serting “or”.

21 (2) In paragraph (4)(B)—

22 (A) by striking “other” both places it ap-
23 pears; and

24 (B) by inserting “, other than the United
25 States, a State, or an Indian tribe,” before the

1 phrase “consistent with the national contin-
2 gency plan”.

3 (3) In paragraph (4), by striking “by such per-
4 son,” and all that follows through “shall be liable
5 for—” and inserting in lieu thereof the following:
6 “by such person—

7 from which there is a release, or a threatened release, that
8 causes the incurrence of response costs, of a hazardous
9 substance, shall be liable for—”.

10 (4) By designating the text beginning with
11 “The amounts recoverable” and ending with “this
12 subsection commences.” as paragraph (5) and align-
13 ing the margin of such text with paragraph (4).

14 **SEC. 303. LIABILITY RELIEF FOR SMALL BUSINESSES, MU-**
15 **NICIPAL SOLID WASTE, SEWAGE SLUDGE, MU-**
16 **NICIPAL OWNERS AND OPERATORS, AND DE**
17 **MICROMIS CONTRIBUTORS.**

18 (a) LIMITATION ON LIABILITY FOR SMALL BUSI-
19 NESSES.—Section 107 (42 U.S.C. 9607) is further
20 amended by adding at the end the following:

21 “(t) LIMITATION ON LIABILITY FOR SMALL BUSI-
22 NESSES.—

23 “(1) IN GENERAL.—With respect to actions
24 taken before September 29, 1999, no small business
25 concern shall be liable under subsection (a)(3) or

1 (a)(4) for response costs or damages at a facility or
2 vessel on the National Priorities List.

3 “(2) LIMITATION.—Paragraph (1) shall not
4 apply to an action brought by the President against
5 a small business concern if the hazardous substances
6 attributable to the small business concern have con-
7 tributed, or contribute, significantly to the costs of
8 the response action at the facility.

9 “(3) SMALL BUSINESS CONCERN DEFINED.—In
10 this subsection, the term ‘small business concern’
11 means a business entity that on average over the
12 previous 3 years preceding the date of notification
13 by the President that the business entity is a poten-
14 tially responsible party—

15 “(A) has no more than 75 full-time em-
16 ployees or the equivalent thereof; and

17 “(B) has \$3,000,000 or less in gross reve-
18 nues.”.

19 (b) LIABILITY RELIEF FOR MUNICIPAL SOLID
20 WASTE AND SEWAGE SLUDGE.—Section 107 (42 U.S.C.
21 9607) is further amended by adding at the end the fol-
22 lowing:

23 “(u) LIABILITY EXEMPTIONS AND LIMITATIONS FOR
24 MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—

25 “(1) PRE-ENACTMENT ACTIVITIES.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), no person shall be liable
3 under subsection (a)(3) or (a)(4) for response
4 costs or damages at a landfill facility on the
5 National Priorities List to the extent that the
6 person arranged or transported municipal solid
7 waste or municipal sewage sludge prior to the
8 date of enactment of this paragraph for dis-
9 posal at the landfill facility.

10 “(B) EXCEPTION.—Notwithstanding sub-
11 paragraph (A), if the President determines that
12 a person transported material containing mu-
13 nicipal solid waste or municipal sewage sludge
14 to a landfill facility that has contributed, or
15 contributes, significantly to the costs of re-
16 sponse at the facility and such person is en-
17 gaged in the business of transporting waste ma-
18 terials, such person may be liable under sub-
19 section (a)(4). The liability of such person shall
20 be subject to the aggregate limits on liability
21 for municipal solid waste set forth in paragraph
22 (2). Any determination of such person’s equi-
23 table share of response costs shall be deter-
24 mined on the basis of such person’s equitable
25 share of the aggregate amount of response costs

1 attributable to municipal solid waste under
2 paragraph (2).

3 “(2) POST-ENACTMENT ACTIVITIES.—

4 “(A) IN GENERAL.—To the extent that a
5 person or group of persons is liable under sub-
6 section (a)(3) or (a)(4) for arranging or trans-
7 porting municipal solid waste or municipal sew-
8 age sludge for disposal at a landfill facility on
9 the National Priorities List on or after the date
10 of enactment of this paragraph, and is not ex-
11 empt from liability under paragraph (3), the
12 total aggregate liability for all such persons or
13 groups of persons for response costs at such a
14 landfill facility shall not exceed 10 percent of
15 such costs.

16 “(B) EXPEDITED SETTLEMENTS.—The
17 President may offer a person subject to a limi-
18 tation on liability under subparagraph (A) an
19 expedited settlement based on the average unit
20 cost of remediating municipal solid waste and
21 municipal sewage sludge in landfills in lieu of
22 the aggregate 10 percent limitation on liability
23 provided by subparagraph (A).

24 “(3) SPECIAL RULE.—No person shall be liable
25 under subsection (a)(3) or (a)(4) for response costs

1 or damages at a landfill facility on the National Pri-
2 orities List to the extent that—

3 “(A) the materials that the person ar-
4 ranged or transported for disposal consist of
5 municipal solid waste; and

6 “(B) the person is—

7 “(i) an owner, operator, or lessee of
8 residential property from which all of the
9 person’s municipal solid waste was gen-
10 erated with respect to the facility;

11 “(ii) a business entity that employs no
12 more than 100 paid individuals and is a
13 small business concern as defined under
14 the Small Business Act (15 U.S.C. 631 et
15 seq.) from which was generated all of the
16 entity’s municipal solid waste with respect
17 to the facility; or

18 “(iii) an organization described in sec-
19 tion 501(c)(3) of the Internal Revenue
20 Code of 1986 and exempt from tax under
21 section 501(a) of such Code if such organi-
22 zation employs no more than 100 paid in-
23 dividuals at the location from which was
24 generated all of the municipal solid waste

1 attributable to the organization with re-
2 spect to the facility.

3 “(4) MIXED WASTES.—Liability for wastes that
4 do not fall within the definition of municipal solid
5 waste under paragraph (5)(A) and are collected and
6 disposed of with municipal solid wastes shall be gov-
7 erned by section 107(a) and any applicable exemp-
8 tions or limitations on liability without regard to the
9 wastes covered by paragraph (5)(A).

10 “(5) DEFINITIONS.—In this section, the fol-
11 lowing definitions apply:

12 “(A) MUNICIPAL SOLID WASTE.—The term
13 ‘municipal solid waste’ means waste materials
14 generated by households, including single and
15 multifamily residences, and hotels and motels,
16 and waste materials generated by commercial,
17 institutional, and industrial sources, to the ex-
18 tent that such materials—

19 “(i) are essentially the same as waste
20 materials normally generated by house-
21 holds, or

22 “(ii) are collected and disposed of
23 with other municipal solid waste, and con-
24 tain hazardous substances that would qual-

1 ify for the de micromis exemption under
2 section 107(w).

3 The term includes food and yard waste, paper,
4 clothing, appliances, consumer product pack-
5 aging, disposable diapers, office supplies, cos-
6 metics, glass and metal food containers, wooden
7 pallets, cardboard, elementary or secondary
8 school science laboratory waste, and household
9 hazardous waste. The term does not include
10 combustion ash generated by resource recovery
11 facilities or municipal incinerators; solid waste
12 from the extraction, beneficiation, and proc-
13 essing of ores and minerals; or waste from
14 manufacturing or processing operations (includ-
15 ing pollution control) that is not essentially the
16 same as waste normally generated by house-
17 holds.

18 “(B) MUNICIPAL SEWAGE SLUDGE.—The
19 term ‘municipal sewage sludge’ means solid,
20 semisolid, or liquid residue removed during the
21 treatment of municipal waste water, domestic
22 sewage, or other waste water at or by (i) a pub-
23 licly owned treatment works, (ii) a federally
24 owned treatment works, or (iii) a treatment
25 works that, without regard to ownership, would

1 be considered to be a publicly owned treatment
2 works and is principally treating municipal
3 waste water or domestic sewage.

4 “(v) MUNICIPAL OWNERS AND OPERATORS.—

5 “(1) IN GENERAL.—A municipality that is lia-
6 ble for response costs under paragraph (1) or (2) of
7 subsection (a) on the basis of ownership or operation
8 of a municipal landfill that is listed on the National
9 Priorities List on or before September 1, 1999 (as
10 identified by the President), shall be eligible for a
11 settlement under this subsection.

12 “(2) SETTLEMENT AMOUNT.—(A) The Presi-
13 dent shall offer a settlement to a party with respect
14 to such liability on the basis of a payment or other
15 obligation equivalent in value to no more than 20
16 percent of the total response costs in connection with
17 the facility. The President may increase this per-
18 centage to no more than 35 percent of the total re-
19 sponse costs in connection with the facility if the
20 President determines—

21 “(i) the municipality exacerbated environ-
22 mental contamination or exposure with respect
23 to the facility; or

24 “(ii) the municipality, during the period of
25 ownership or operation of the facility, received

1 operating revenues substantially in excess of the
2 sum of the waste system operating costs plus
3 20 percent of total estimated response costs in
4 connection with the facility.

5 “(B) Such a settlement shall pertain to only the
6 party’s liability under paragraph (1) or (2) of sub-
7 section (a).

8 “(3) PERFORMANCE OF RESPONSE ACTIONS.—
9 Subject to the limitations of paragraph (2), the
10 President may require, as a condition of a settle-
11 ment with a municipality under this subsection, that
12 the municipality perform, or participate in the per-
13 formance of, the response actions at the site.

14 “(4) JOINT OWNERSHIP OR OPERATION.—A
15 combination of 2 or more municipalities that jointly
16 owned or operated the facility at the same time or
17 during continuous operations under municipal con-
18 trol, shall be considered a single owner/operator for
19 the purpose of calculating a settlement offer pursu-
20 ant to this subsection.

21 “(5) WAIVER OF CLAIMS.—The President may
22 require, as a condition of a settlement under this
23 subsection, that the municipality waive some or all
24 of the claims or causes of action that such munici-
25 pality may have against other potentially responsible

1 parties relating to the site, including claims for con-
2 tribution under section 113.

3 “(6) EXCEPTIONS.—The President may decline
4 to offer a settlement under this subsection where the
5 President determines—

6 “(A) there is only municipal solid waste or
7 sewage sludge at the facility;

8 “(B) all other identified potentially respon-
9 sible parties are insolvent, defunct, or eligible
10 for a settlement under this subsection or under
11 section 122(g);

12 “(C) the municipality has failed to comply
13 fully and completely with information requests,
14 administrative subpoenas, or discovery requests
15 issued by the United States; or

16 “(D) the municipality has impeded or is
17 impeding, through action or inaction, the per-
18 formance of a response action or a natural re-
19 source restoration with respect to the facility.

20 “(7) EXPIRATION OF OFFER.—The President’s
21 obligation to offer a settlement under this section
22 shall expire if the municipality to which the offer is
23 made fails to accept such an offer within a reason-
24 able time period.”.

1 (c) DE MICROMIS EXEMPTION.—Section 107 (42
2 U.S.C. 9607) is further amended by adding at the end
3 the following:

4 “(w) DE MICROMIS EXEMPTION.—

5 “(1) IN GENERAL.—In the case of a facility or
6 vessel listed on the National Priorities List, no per-
7 son shall be liable under subsection (a)(3) or (a)(4)
8 if no more than 110 gallons or 200 pounds of mate-
9 rials containing hazardous substances at the facility
10 or vessel is attributable to such person, and the acts
11 on which liability is based took place before the date
12 of enactment of this subsection.

13 “(2) EXCEPTION.—Paragraph (1) shall not
14 apply in a case in which the President determines
15 that the material described in paragraph (1) has
16 contributed, or contributes, significantly to the costs
17 of response at the facility.”.

18 (d) INELIGIBILITY FOR EXEMPTIONS OR LIMITA-
19 TIONS.—Section 107 (42 U.S.C. 9607) is further amended
20 by adding at the end the following:

21 “(x) INELIGIBILITY FOR EXEMPTIONS OR LIMITA-
22 TIONS.—

23 “(1) IMPEDING RESPONSE OR RESTORATION.—
24 The exemptions and limitations set forth in sub-
25 sections (t), (u), (v), and (w) and sections 114(c)

1 and 128 shall not apply to any person with respect
2 to a facility if such person impedes the performance
3 of a response action or natural resource restoration
4 at the facility.

5 “(2) FAILURE TO RESPOND TO INFORMATION
6 REQUEST.—The exemptions and limitations set forth
7 in subsections (t), (u), (v), and (w) and sections
8 114(c) and 128 shall not apply to any person who—

9 “(A) willfully fails to submit a complete
10 and timely response to an information request
11 under section 104(e); or

12 “(B) knowingly makes any false or mis-
13 leading material statement or representation in
14 any such response.

15 “(3) FAILURE TO PROVIDE COOPERATION AND
16 FACILITY ACCESS.—The limitation set forth in sub-
17 section (v) shall not apply to any owner or operator
18 of a facility who does not provide all reasonable co-
19 operation and facility access to persons authorized to
20 conduct response actions at the facility.”.

21 (e) EXEMPT PARTY FUNDING; CONCLUDED AC-
22 TIONS; OVERSIGHT COSTS.—Section 107 (42 U.S.C.
23 9607) is further amended by adding at the end the fol-
24 lowing:

25 “(y) EXEMPT PARTY FUNDING.—

1 “(1) EXEMPT PARTY FUNDING.—Except as
2 provided in paragraph (2), the equitable share of li-
3 ability under section 107(a) for any release or
4 threatened release of a hazardous substance from a
5 facility or vessel on the National Priorities List that
6 is extinguished through an exemption or limitation
7 on liability under subsection (t), (u), or (v) of this
8 section, section 114(c), or section 128 shall be trans-
9 ferred to and assumed by the Trust Fund.

10 “(2) CERTAIN MSW GENERATORS.—Paragraph
11 (1) shall not apply to the equitable share of liability
12 of any person who would have been liable under sub-
13 section (a)(3) or (4) but for the exemption from li-
14 ability under subsection (u)(3).

15 “(3) SOURCE OF FUNDS.—Payments made by
16 the Trust Fund or work performed on behalf of the
17 Trust Fund to meet the obligations under paragraph
18 (1) shall be funded from amounts made available by
19 section 111(a)(1).

20 “(z) EFFECT ON CONCLUDED ACTIONS.—The ex-
21 emptions from, and limitations on, liability provided under
22 subsections (t), (u), (v), and (w) and sections 114(c) and
23 128 shall not affect any settlement or judgment approved
24 by a United States District Court not later than 30 days
25 after the date of enactment of this subsection or any ad-

1 ministrative action against a person otherwise covered by
2 such exemption or limitation that becomes effective not
3 later than 30 days after such date of enactment.

4 “(aa) LIMITATION ON RECOVERY OF OVERSIGHT
5 COSTS.—

6 “(1) IN GENERAL.—Costs of oversight of a re-
7 sponse action shall not be recoverable under this sec-
8 tion from a person referred to in paragraph (2) to
9 the extent that such costs exceed 10 percent of the
10 costs of the response action.

11 “(2) ACCOUNTING OF RESPONSE COSTS.—Para-
12 graph (1) shall apply only to a person who provides
13 the Administrator with an accounting of the direct
14 and indirect costs that the person incurred in con-
15 ducting the response action. The Administrator may
16 require an independent audit of the costs from such
17 person.”.

18 (f) CONFORMING AMENDMENT.—Section 113(f)(1) is
19 amended by inserting “or section 107(y)” after “107(a)”
20 in the first place it appears.

21 **SEC. 304. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

22 (a) EXTENSION OF NEGLIGENCE STANDARD.—Sub-
23 section (a) of section 119 (42 U.S.C. 9619(a)) is amended
24 as follows:

1 (1) In paragraph (1) by striking “title or under
2 any other Federal law” and inserting “title, under
3 any other Federal law, or under the law of any State
4 or political subdivision of a State”.

5 (2) By adding at the end of paragraph (1) the
6 following: “Notwithstanding the preceding sentence,
7 this section shall not apply in determining the liabil-
8 ity of a response action contractor under the law of
9 any State or political subdivision thereof if the State
10 has enacted a law determining the liability of a re-
11 sponse action contractor.”.

12 (3) By adding at the end of paragraph (2) the
13 following: “Such conduct shall be evaluated based on
14 the generally accepted standards and practices in ef-
15 fect at the time and place that the conduct oc-
16 curred.”.

17 (b) EXTENSION OF INDEMNIFICATION AUTHOR-
18 ITY.—Section 119(c) (42 U.S.C. 9619(c)) is amended by
19 adding at the end of paragraph (1) the following: “Any
20 such agreement may apply to claims for negligence arising
21 under Federal law or under the law of any State or polit-
22 ical subdivision of a State.”.

23 (c) INDEMNIFICATION FOR THREATENED RE-
24 LEASES.—Section 119(c)(5) (42 U.S.C. 9619(c)(5)) is

1 amended in subparagraph (A) by inserting “or threatened
2 release” after “release” each place it appears.

3 **SEC. 305. AMENDMENTS TO SECTION 122.**

4 (a) FINAL COVENANTS.—Section 122(f) (42 U.S.C.
5 9622(f)) is amended as follows:

6 (1) By striking paragraph (1) and inserting the
7 following:

8 “(1) FINAL COVENANTS.—The President shall
9 offer potentially responsible parties who enter into
10 settlement agreements that are in the public interest
11 a final covenant not to sue concerning any liability
12 to the United States under this Act, including a cov-
13 enant with respect to future liability, for response
14 actions or response costs addressed in the settle-
15 ment, if all of the following conditions are met:

16 “(A) The settling party agrees to perform,
17 or there are other adequate assurances of the
18 performance of, a final remedial action author-
19 ized by the Administrator for the release or
20 threat of release that is the subject of the set-
21 tlement.

22 “(B) The settlement agreement has been
23 reached prior to the commencement of litigation
24 against the settling party under section 106 or
25 107 of this Act with respect to this facility.

1 “(C) The settling party waives all contribu-
2 tion rights against other potentially responsible
3 parties at the facility.

4 “(D) The settling party (other than a
5 small business) pays a premium that com-
6 pensates for the risks of remedy failure; future
7 liability resulting from unknown conditions; and
8 unanticipated increases in the cost of any
9 uncompleted response action, unless the settling
10 party is performing the response action. The
11 President shall have sole discretion to deter-
12 mine the appropriate amount of any such pre-
13 mium, and such determinations are committed
14 to the President’s discretion. The President has
15 discretion to waive or reduce the premium pay-
16 ment for persons who demonstrate an inability
17 to pay such a premium.

18 “(E) The remedial action does not rely on
19 institutional controls to ensure continued pro-
20 tection of human health and the environment.

21 “(F) The settlement is otherwise accept-
22 able to the United States.”.

23 (2) In paragraph (2) by striking “remedial”
24 each place it appears and inserting “response”.

1 (3) By striking paragraph (3) and inserting the
2 following:

3 “(3) DISCRETIONARY COVENANTS.—For settle-
4 ments under this Act for which covenants under
5 paragraph (1) are not available, the President may,
6 in his discretion, provide any person with a covenant
7 not to sue concerning any liability to the United
8 States under this Act, if the covenant not to sue is
9 in the public interest. Such covenants shall be sub-
10 ject to the requirements of paragraph (5). The
11 President may include any conditions in such cov-
12 enant not to sue, including the additional condition
13 referred to in paragraph (5). In determining whether
14 such conditions or covenants are in the public inter-
15 est, the President shall consider the nature and
16 scope of the commitment by the settling party under
17 the settlement, the effectiveness and reliability of the
18 response action, the nature of the risks remaining at
19 the facility, the strength of evidence, the likelihood
20 of cost recovery, the reliability of any response ac-
21 tion or actions to restore, replace, or acquire the
22 equivalent of injured natural resources, the extent to
23 which performance standards are included in the
24 order or decree, the extent to which the technology
25 used in the response action is demonstrated to be ef-

1 fective, and any other factors relevant to the protec-
2 tion of human health and the environment.”.

3 (4) By striking paragraph (4) and redesignig-
4 nating paragraphs (5) and (6) as paragraphs (4)
5 and (5), respectively.

6 (5) In subparagraph (A) of paragraph (5) (as
7 so redesignated)—

8 (A) by striking “remedial” the first place
9 it appears and inserting “response”;

10 (B) by striking “paragraph (2)” and in-
11 serting “paragraph (1) or (2)”;

12 (C) by striking “de minimis settlements”
13 and inserting “de minimis and other expedited
14 settlements pursuant to subsection (g) of this
15 section”; and

16 (D) by striking “the President certifies
17 under paragraph (3) that remedial action has
18 been completed at the facility concerned”, and
19 inserting “that the response action that is the
20 subject of the settlement agreement is se-
21 lected”.

22 (6) In subparagraph (B) of paragraph (5) (as
23 so redesignated)—

24 (A) by striking “In extraordinary cir-
25 cumstances, the” and inserting “The”;

1 (B) by striking “those referred to in para-
2 graph (4) and”;

3 (C) by striking “if other terms,” and in-
4 serting “, if the agreement containing the cov-
5 enant not to sue provides for payment of a pre-
6 mium to address possible remedy failure or any
7 releases that may result from unknown condi-
8 tions, and if other terms,”; and

9 (D) by adding at the end the following:
10 “The President may waive or reduce the pre-
11 mium payment for persons who demonstrate an
12 inability to pay such a premium.”.

13 (b) EXPEDITED FINAL SETTLEMENTS.—Section 122
14 (42 U.S.C. 6922) is further amended as follows:

15 (1) In subsection (g) by striking “(g)” and all
16 that follows through the period at the end of para-
17 graph (1) and inserting the following:

18 “(g) EXPEDITED FINAL SETTLEMENT.—

19 “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-
20 TLEMENT.—The President shall, as promptly as pos-
21 sible, offer to reach a final administrative or judicial
22 settlement with potentially responsible parties who,
23 in the judgment of the President, meet the following
24 conditions for eligibility for an expedited settlement
25 in subparagraph (A) or (B):

1 “(A) The potentially responsible party’s in-
2 dividual contribution to the release of haz-
3 ardous substances at the facility as an owner or
4 operator, arranger for disposal, or transporter
5 for disposal is de minimis. The contribution of
6 hazardous substance to a facility by a poten-
7 tially responsible party is de minimis if both of
8 the following conditions are met:

9 “(i) The contribution of materials
10 containing hazardous substances that the
11 potentially responsible party arranged or
12 transported for treatment or disposal, or
13 that were treated or disposed during the
14 potentially responsible party’s period of
15 ownership or operation of the facility, is
16 minimal in comparison to the total volume
17 of materials containing hazardous sub-
18 stances at the facility. Such individual con-
19 tribution is presumed to be minimal if it is
20 not more than 1 percent of the total vol-
21 ume of such materials, unless the Adminis-
22 trator identifies a different threshold based
23 on site-specific factors.

24 “(ii) Such hazardous substances do
25 not present toxic or other hazardous ef-

1 fects that are significantly greater than
2 those of other hazardous substances at the
3 facility.

4 “(B)(i) The potentially responsible party is
5 a natural person, a small business, or a munici-
6 pality and can demonstrate to the United
7 States an inability or limited ability to pay re-
8 sponse costs. A party who enters into a settle-
9 ment pursuant to this subparagraph shall be
10 deemed to have resolved its liability under this
11 Act to the United States for all matters ad-
12 dressed in the settlement.

13 “(ii) For purposes of this subparagraph,
14 the following provisions apply:

15 “(I) In the case of a small business,
16 the President shall take into consideration
17 the ability to pay of the business, if re-
18 quested by the business. The term ‘ability
19 to pay’ means the President’s reasonable
20 expectation of the ability of the small busi-
21 ness to pay its total settlement amount
22 and still maintain its basic business oper-
23 ations. Such consideration shall include the
24 business’s overall financial condition and

1 demonstrable constraints on its ability to
2 raise revenues.

3 “(II) Any business requesting such
4 consideration shall promptly provide the
5 President with all relevant information
6 needed to determine the business’s ability
7 to pay.

8 “(III) If the President determines
9 that a small business is unable to pay its
10 total settlement amount immediately, the
11 President shall consider alternative pay-
12 ment methods as may be necessary or ap-
13 propriate. The methods to be considered
14 may include installment payments to be
15 paid during a period of not to exceed 10
16 years and the provision of in-kind services.

17 “(iii) Any municipality which is a poten-
18 tially responsible party may submit for consid-
19 eration by the President an evaluation of the
20 potential impact of the settlement on essential
21 services that the municipality must provide, and
22 the feasibility of making delayed payments or
23 payments over time. If a municipality asserts
24 that it has additional environmental obligations
25 besides its potential liability under this Act,

1 then the municipality may create a list of the
2 obligations, including an estimate of the costs
3 of complying with such obligations.

4 “(iv) Any municipality which is a poten-
5 tially responsible party may establish an inabil-
6 ity to pay through an affirmative showing that
7 such payment of its liability under this Act
8 would either—

9 “(I) create a substantial demonstrable
10 risk that the municipality would default on
11 existing debt obligations, be forced into
12 bankruptcy, be forced to dissolve, or be
13 forced to make budgetary cutbacks that
14 would substantially reduce current levels of
15 protection of public health and safety; or

16 “(II) necessitate a violation of legal
17 requirements or limitations of general ap-
18 plicability concerning the assumption and
19 maintenance of fiscal municipal obliga-
20 tions.

21 “(v) This subparagraph does not limit or
22 affect the President’s authority to evaluate any
23 person’s ability to pay or to enter into settle-
24 ments with any person based on that person’s
25 inability to pay.”.

1 (2) By striking paragraphs (2) and (3) of sub-
2 section (g) and inserting the following:

3 “(2) BASIS OF DETERMINATION.—

4 “(A) IN GENERAL.—Any person who en-
5 ters into a settlement pursuant to this sub-
6 section shall provide any information requested
7 by the President in accordance with section
8 104(e). The determination of whether a person
9 is eligible for an expedited settlement shall be
10 made on the basis of all information available
11 to the President at the time the determination
12 is made.

13 “(B) DECISION OF NONQUALIFICATION;
14 APPEAL.—

15 “(i) DECISION OF NONQUALIFICA-
16 TION.—If the President determines that a
17 party does not qualify for a settlement
18 under this subsection, the President shall
19 notify the party, in writing, within 90 days
20 after the later of—

21 “(I) a request by the party for
22 settlement under this subsection; or

23 “(II) the receipt of all informa-
24 tion required by the President from

1 the requesting party to make a deter-
2 mination under this paragraph,
3 stating the reasons for denial. If the Presi-
4 dent does not notify the party within such
5 90-day period, the request is deemed de-
6 nied.

7 “(ii) APPEAL.—

8 “(I) IN GENERAL.—Notwith-
9 standing any other provision of this
10 Act, a denial of settlement under this
11 subsection may be appealed.

12 “(II) AUTHORITY OF ENVIRON-
13 MENTAL APPEALS BOARD.—The Envi-
14 ronmental Appeals Board of the Envi-
15 ronmental Protection Agency is au-
16 thorized to adjudicate denials of set-
17 tlement under this subsection. Within
18 60 days of the date on which notice of
19 denial is received, a denial of settle-
20 ment may be appealed to the Board.
21 The Board may consider whether the
22 President has followed the provisions
23 of this Act but shall not determine
24 questions regarding liability.

1 “(III) PROCEDURAL RULES.—In
2 any appeal made pursuant to this
3 clause, the documents submitted by
4 the requester under clause (i)(II) are
5 not confidential. If a requester agrees
6 not to contest the share of liability
7 under section 107 assigned by the
8 President, the appeal shall include
9 only a determination of the request-
10 er’s ability to pay its allocated share.

11 “(C) JUDICIAL PROCEDURES.—In review-
12 ing a proposed settlement under this subsection,
13 a United States district court shall give def-
14 erence to the President’s determination that the
15 settlement is in the public interest and meets
16 applicable legal standards for court approval.
17 Any person who challenges a proposed settle-
18 ment bears the burden of proving that the pro-
19 posed settlement does not meet applicable legal
20 standards for court approval. If a settlement is
21 reached with a requester, the confidential infor-
22 mation supplied to the President under this
23 subsection may be submitted under seal to the
24 court for in camera review.

1 “(3) ADDITIONAL FACTORS RELEVANT TO SET-
2 TLEMENTS WITH MUNICIPALITIES.—In any settle-
3 ment with a municipality pursuant to this Act, the
4 President may take additional equitable factors into
5 account in determining an appropriate settlement
6 amount, including the limited resources available to
7 that party, and any in-kind services that the party
8 may provide to support the response action at the
9 facility. In considering the value of in-kind services,
10 the President shall consider the fair market value of
11 those services.”.

12 (3) In subsection (g)(4) by striking “\$500,000”
13 and inserting “\$2,000,000”.

14 (4) By striking paragraph (5) of subsection (g)
15 and inserting the following:

16 “(5) SMALL BUSINESS DEFINED.—In this sec-
17 tion, the term ‘small business’ refers to any business
18 entity that employs no more than 100 individuals
19 and is a ‘small business concern’ as defined under
20 the Small Business Act (15 U.S.C. 631 et seq.).”.

21 (5) By adding at the end of subsection (g) the
22 following:

23 “(7) DEADLINE.—If the President does not
24 make a settlement offer to a small business on or
25 before the 180th day following the date of the Presi-

1 dent's determination that such small business is eli-
2 gible for an expedited settlement under this sub-
3 section, or on or before the 180th day following the
4 date of the enactment of this paragraph, whichever
5 is later, such small business shall have no further li-
6 ability under this Act, unless the failure to make a
7 settlement offer on or before such 180th day is due
8 to circumstances beyond the control of the Presi-
9 dent.

10 “(8) PREMIUMS.—In any settlement under this
11 Act with a small business, the President may not re-
12 quire the small business to pay any premium over
13 and above the small business's share of liability.”.

14 (c) MUNICIPALITY DEFINED.—Section 101 (42
15 U.S.C. 9601) is amended by inserting at the end the fol-
16 lowing:

17 “(39) The term ‘municipality’ means a political
18 subdivision of a State, including a city, county, vil-
19 lage, town, township, borough, parish, school dis-
20 trict, sanitation district, water district, or other pub-
21 lic entity performing local governmental functions.
22 The term also includes a natural person acting in
23 the capacity of an official, employee, or agent of any
24 entity referred to in the preceding sentence in the
25 performance of governmental functions.”.

1 **SEC. 306. CLARIFICATION OF LIABILITY FOR RECYCLING**
2 **TRANSACTIONS.**

3 (a) RECYCLING TRANSACTIONS.—Title I (42 U.S.C.
4 9601 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 128. RECYCLING TRANSACTIONS.**

7 “(a) LIABILITY CLARIFICATION.—(1) As provided in
8 subsections (b), (c), (d), (e), and (f), a person who ar-
9 ranged for the recycling of recyclable material shall not
10 be liable under sections 107(a)(3) and 107(a)(4) with re-
11 spect to such material.

12 “(2) A determination whether or not any person shall
13 be liable under section 107(a)(3) or 107(a)(4) for any ma-
14 terial that is not a recyclable material as that term is used
15 in subsections (b), (c), (d), (e), or (f) of this section shall
16 be made, without regard to subsection (b), (c), (d), (e),
17 or (f) of this section.

18 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
19 poses of this section, the term ‘recyclable material’ means
20 scrap paper, scrap plastic, scrap glass, scrap textiles,
21 scrap rubber, scrap metal, or spent lead-acid, spent nickel-
22 cadmium, and other spent batteries, as well as minor
23 amounts of material incident to or adhering to the scrap
24 material as a result of its normal and customary use prior
25 to becoming scrap; except that such term shall not
26 include—

1 “(1) shipping containers of a capacity from 30
2 liters to 3,000 liters, whether intact or not, having
3 any hazardous substance (but not metal bits and
4 pieces or hazardous substance that form an integral
5 part of the container) contained in or adhering
6 thereto; or

7 “(2) any item of material that contained PCBs
8 at a concentration in excess of 50 ppm or any new
9 standard promulgated pursuant to applicable Fed-
10 eral laws.

11 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
12 PLASTIC, GLASS, TEXTILES, OR RUBBER.—

13 “(1) IN GENERAL.—Transactions involving re-
14 cyclable materials that consist of scrap paper, scrap
15 plastic, scrap glass, scrap textiles, or scrap rubber
16 shall be deemed to be arranging for recycling if the
17 person who arranged for the transaction (by selling
18 recyclable material or otherwise arranging for the re-
19 cycling of recyclable material) can demonstrate by a
20 preponderance of the evidence that all of the fol-
21 lowing criteria were met at the time of the trans-
22 action:

23 “(A) The recyclable material met a com-
24 mercial specification grade.

1 “(B) A market existed for the recyclable
2 material.

3 “(C) A substantial portion of the recyclable
4 material was made available for use as a feed-
5 stock for the manufacture of a new saleable
6 product.

7 “(D) The recyclable material could have
8 been a replacement or substitute for a virgin
9 raw material, or the product to be made from
10 the recyclable material could have been a re-
11 placement or substitute for a product made, in
12 whole or in part, from a virgin raw material.

13 “(E) For transactions occurring on or
14 after the 90th day following the date of the en-
15 actment of this section, the person exercised
16 reasonable care to determine that the facility
17 where the recyclable material would be handled,
18 processed, reclaimed, or otherwise managed by
19 another person (hereinafter in this section re-
20 ferred to as a ‘consuming facility’) was in com-
21 pliance with substantive (not procedural or ad-
22 ministrative) provisions of any Federal, State,
23 or local environmental law or regulation, or
24 compliance order or decree issued pursuant
25 thereto, applicable to the handling, processing,

1 reclamation, storage, or other management ac-
2 tivities associated with the recyclable material.

3 “(2) REASONABLE CARE.—For purposes of this
4 subsection, ‘reasonable care’ shall be determined
5 using criteria that include—

6 “(A) the price paid in the recycling trans-
7 action;

8 “(B) the ability of the person to detect the
9 nature of the consuming facility’s operations
10 concerning its handling, processing, reclama-
11 tion, or other management activities associated
12 with the recyclable material; and

13 “(C) the result of inquiries made to the ap-
14 propriate Federal, State, or local environmental
15 agency (or agencies) regarding the consuming
16 facility’s past and current compliance with sub-
17 stantive (not procedural or administrative) pro-
18 visions of any Federal, State, or local environ-
19 mental law or regulation, or compliance order
20 or decree issued pursuant thereto, applicable to
21 the handling, processing, reclamation, storage,
22 or other management activities associated with
23 the recyclable material.

24 “(3) TREATMENT OF CERTAIN REQUIREMENTS
25 AS SUBSTANTIVE PROVISIONS.—For purposes of this

1 subsection, a requirement to obtain a permit applica-
2 ble to the handling, processing, reclamation, or other
3 management activities associated with the recyclable
4 materials shall be deemed to be a substantive provi-
5 sion.

6 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

7 “(1) IN GENERAL.—Transactions involving re-
8 cyclable materials that consist of scrap metal shall
9 be deemed to be arranging for recycling if the per-
10 son who arranged for the transaction (by selling re-
11 cyclable material or otherwise arranging for the re-
12 cycling of recyclable material) can demonstrate by a
13 preponderance of the evidence that at the time of
14 the transaction—

15 “(A) the person met the criteria set forth
16 in subsection (c) with respect to the scrap
17 metal;

18 “(B) the person was in compliance with
19 any applicable regulations or standards regard-
20 ing the storage, transport, management, or
21 other activities associated with the recycling of
22 scrap metal that the Administrator issues under
23 the Solid Waste Disposal Act (42 U.S.C. 6901
24 et seq.) after the date of the enactment of this
25 section and with regard to transactions occur-

1 ring after the effective date of such regulations
2 or standards; and

3 “(C) the person did not melt the scrap
4 metal prior to the transaction.

5 “(2) MELTING OF SCRAP METAL.—For pur-
6 poses of paragraph (1)(C), melting of scrap metal
7 does not include the thermal separation of 2 or more
8 materials due to differences in their melting points
9 (referred to as ‘sweating’).

10 “(3) SCRAP METAL DEFINED.—In this sub-
11 section, the term ‘scrap metal’ means—

12 “(A) bits and pieces of metal parts (such
13 as bars, turnings, rods, sheets, and wire) or
14 metal pieces that may be combined together
15 with bolts or soldering (such as radiators, scrap
16 automobiles, and railroad box cars) which when
17 worn or superfluous can be recycled; and

18 “(B) notwithstanding paragraph (1)(C),
19 metal byproducts of the production of copper
20 and copper based alloys that—

21 “(i) are not the sole or primary prod-
22 ucts of a secondary production process,

23 “(ii) are not produced separately from
24 the primary products of a secondary pro-
25 duction process,

1 “(iii) are not and have not been
2 stored in a pile or surface impoundment,
3 and

4 “(iv) are sold to another recycler that
5 is not speculatively accumulating such by-
6 products,

7 except for any scrap metal that the Administrator
8 excludes from this definition by regulation.

9 “(e) TRANSACTIONS INVOLVING BATTERIES.—

10 “(1) IN GENERAL.—Transactions involving re-
11 cyclable materials that consist of spent lead-acid bat-
12 teries, spent nickel-cadmium batteries, or other
13 spent batteries shall be deemed to be arranging for
14 recycling if the person who arranged for the trans-
15 action (by selling recyclable material or otherwise ar-
16 ranging for the recycling of recyclable material) can
17 demonstrate by a preponderance of the evidence that
18 at the time of the transaction—

19 “(A) the person met the criteria set forth
20 in subsection (c) with respect to the spent lead-
21 acid batteries, spent nickel-cadmium batteries,
22 or other spent batteries but did not recover the
23 valuable components of such batteries; and

24 “(B)(i) with respect to transactions involv-
25 ing lead-acid batteries, the person was in com-

1 pliance with applicable Federal environmental
2 regulations or standards, and any amendments
3 thereto, regarding the storage, transport, man-
4 agement, or other activities associated with the
5 recycling of spent lead-acid batteries;

6 “(ii) with respect to transactions involving
7 nickel-cadmium batteries, Federal environ-
8 mental regulations or standards were in effect
9 regarding the storage, transport, management,
10 or other activities associated with the recycling
11 of spent nickel-cadmium batteries and the per-
12 son was in compliance with such regulations or
13 standards and any amendments thereto; or

14 “(iii) with respect to transactions involving
15 other spent batteries, Federal environmental
16 regulations or standards were in effect regard-
17 ing the storage, transport, management, or
18 other activities associated with the recycling of
19 such batteries and the person was in compliance
20 with such regulations or standards and any
21 amendments thereto.

22 “(2) RECOVERY OF VALUABLE BATTERY COM-
23 PONENTS.—For purposes of paragraph (1)(A), a
24 person who, by contract, arranges or pays for proc-
25 essing of batteries by an unrelated third person and

1 receives from such third person materials reclaimed
2 from such batteries shall not thereby be deemed to
3 recover the valuable components of such batteries.

4 “(f) EXCLUSIONS.—

5 “(1) IN GENERAL.—The exemptions set forth in
6 subsections (c), (d), and (e) shall not apply if—

7 “(A) the person had an objectively reason-
8 able basis to believe at the time of the recycling
9 transaction that—

10 “(i) the recyclable material would not
11 be recycled;

12 “(ii) the recyclable material would be
13 burned as fuel or for energy recovery or in-
14 cineration; or

15 “(iii) for transactions occurring on or
16 before the 90th day following the date of
17 the enactment of this section, the con-
18 suming facility was not in compliance with
19 a substantive (not a procedural or adminis-
20 trative) provision of any Federal, State, or
21 local environmental law or regulation, or
22 compliance order or decree issued pursuant
23 thereto, applicable to the handling, proc-
24 essing, reclamation, or other management

1 activities associated with the recyclable
2 material;

3 “(B) the person had reason to believe that
4 hazardous substances had been added to the re-
5 cyclable material for purposes other than proc-
6 essing for recycling; or

7 “(C) the person failed to exercise reason-
8 able care with respect to the management and
9 handling of the recyclable material (including
10 adhering to customary industry practices cur-
11 rent at the time of the recycling transaction de-
12 signed to minimize, through source control, con-
13 tamination of the recyclable material by haz-
14 ardous substances).

15 “(2) OBJECTIVELY REASONABLE BASIS.—For
16 purposes of paragraph (1)(A), an objectively reason-
17 able basis for belief shall be determined using cri-
18 teria that include the size of the person’s business,
19 customary industry practices (including customary
20 industry practices current at the time of the recy-
21 cling transaction designed to minimize, through
22 source control, contamination of the recyclable mate-
23 rial by hazardous substances), the price paid in the
24 recycling transaction, and the ability of the person
25 to detect the nature of the consuming facility’s oper-

1 ations concerning its handling, processing, reclama-
2 tion, or other management activities associated with
3 the recyclable material.

4 “(3) TREATMENT OF CERTAIN REQUIREMENTS
5 AS SUBSTANTIVE PROVISIONS.—For purposes of this
6 subsection, a requirement to obtain a permit applica-
7 ble to the handling, processing, reclamation, or other
8 management activities associated with recyclable ma-
9 terial shall be deemed to be a substantive provision.

10 “(g) EFFECT ON OWNER LIABILITY.—Nothing in
11 this section shall be deemed to affect the liability of a per-
12 son under section 107(a)(1) or 107(a)(2).

13 “(h) RELATIONSHIP TO LIABILITY UNDER OTHER
14 LAWS.—Nothing in this section shall affect—

15 “(1) liability under any other Federal, State, or
16 local statute or regulation promulgated pursuant to
17 any such statute, including any requirements pro-
18 mulgated by the Administrator under the Solid
19 Waste Disposal Act (42 U.S.C. 6901 et seq.); or

20 “(2) the ability of the Administrator to promul-
21 gate regulations under any other statute, including
22 the Solid Waste Disposal Act (42 U.S.C. 6901 et
23 seq.).

24 “(i) LIMITATION ON STATUTORY CONSTRUCTION.—
25 Nothing in this section shall be construed to—

1 “(1) affect any defenses or liabilities of any per-
2 son to whom subsection (a)(1) does not apply; or

3 “(2) create any presumption of liability against
4 any person to whom subsection (a)(1) does not
5 apply.”.

6 (b) SERVICE STATION DEALERS.—Section 114(c)
7 (42 U.S.C. 9614(c)) is amended—

8 (1) in paragraph (1)(B)—

9 (A) by striking “authorities.” and inserting
10 “authorities that were in effect on the date of
11 such activity.”;

12 (2) in paragraph (2)—

13 (A) by striking “a service station dealer
14 may presume that”;

15 (B) by striking “is not mixed with” and in-
16 serting “is presumed to be not mixed with”;
17 and

18 (C) by striking subparagraphs (A) and (B)
19 and inserting the following:

20 “(A) has been removed from the engine of
21 a light duty motor vehicle or household appli-
22 ance by the owner of such vehicle or appliance
23 and is presented by such owner to the dealer
24 for collection, accumulation, and delivery to an
25 oil recycling facility; or

1 “(B) has been removed from such an en-
2 gine or appliance by the dealer for collection,
3 accumulation, and delivery to an oil recycling
4 facility.”; and
5 (3) by striking paragraph (4).

6 **SEC. 307. ALLOCATION.**

7 Title I (42 U.S.C. 9601 et seq.) is further amended
8 by adding at the end the following new section:

9 **“SEC. 129. ALLOCATION.**

10 “(a) PURPOSE OF ALLOCATION.—The purpose of an
11 allocation under this section is to determine an equitable
12 allocation of the costs of a removal or remedial action at
13 a facility on the National Priorities List that is eligible
14 for an allocation under this section, including the share
15 to be borne by the Trust Fund under subsection (i).

16 “(b) ELIGIBLE RESPONSE ACTION.—

17 “(1) IN GENERAL.—A removal or remedial ac-
18 tion is eligible for an allocation under this section if
19 the action is at a facility on the National Priorities
20 List and if—

21 “(A) the performance of the removal or re-
22 medial action is not the subject of an adminis-
23 trative order or consent decree as of September
24 29, 1999;

1 “(B) the President’s estimate of the costs
2 for performing such removal or remedial action
3 that have not been recovered by the President
4 as of September 29, 1999, exceeds \$2,000,000;
5 and

6 “(C) there are response costs attributable
7 to the Fund share under subsection (i).

8 “(2) EXCLUDED RESPONSE ACTIONS.—

9 “(A) CHAIN OF TITLE SITES.—Notwith-
10 standing paragraph (1), a removal or remedial
11 action is not eligible for an allocation if—

12 “(i) the facility is located on a contig-
13 uous area of real property under common
14 ownership or control; and

15 “(ii) all of the parties potentially lia-
16 ble for response costs are current or
17 former owners or operators of such facility,
18 unless the current owner of such facility is in-
19 solvent or defunct.

20 “(B) CURRENT OWNER.—If the current
21 owner of the property on which the facility is
22 located is not liable under section 107(b)(2),
23 the owner immediately preceding such owner
24 shall be considered to be the current owner of
25 the property for purposes of subparagraph (A).

1 “(C) AFFILIATED PARTIES.—If the current
2 owner is affiliated with any other person
3 through any direct or indirect familial relation-
4 ship or any contractual, corporate, or financial
5 relationship other than that created by instru-
6 ments by which title to the facility is conveyed
7 or financed or by a contract for the sale of
8 goods or services, and such other person is lia-
9 ble for response costs at the facility, such other
10 person’s assets may be considered assets of the
11 current owner when determining under sub-
12 paragraph (A) whether the current owner is in-
13 solvent or defunct.

14 “(c) DISCRETIONARY ALLOCATION PROCESS.—Not-
15 withstanding subsection (b), the President may initiate an
16 allocation under this section for any removal or remedial
17 action at a facility listed on the National Priorities List
18 and may provide a Fund share under subsection (i).

19 “(d) ALLOCATION PROCESS.—For each eligible re-
20 moval or remedial action, the President shall ensure that
21 a fair and equitable allocation of liability is undertaken
22 at an appropriate time by a neutral allocator selected by
23 agreement of the parties under such process or procedures
24 as are agreed by the parties. An allocation under this sec-
25 tion shall apply to subsequent removal or remedial actions

1 for a facility unless the allocator determines that the allo-
2 cation should address only one or more of such removal
3 or remedial actions.

4 “(e) EARLY OFFER OF SETTLEMENT.—As soon as
5 practicable and prior to the selection of an allocator, the
6 President shall provide an estimate of the aggregate Fund
7 share in accordance with subsection (i). The President
8 shall offer to contribute to a settlement of liability for re-
9 sponse costs on the basis of this estimate.

10 “(f) REPRESENTATION OF THE UNITED STATES AND
11 AFFECTED STATES.—The Administrator or the Attorney
12 General, as a representative of the Fund, and a represent-
13 ative of any State that is or may be responsible pursuant
14 to section 104(c)(3) for any costs of a removal or remedial
15 action that is the subject of an allocation shall be entitled
16 to participate in the allocation proceeding to the same ex-
17 tent as any potentially responsible party.

18 “(g) MORATORIUM ON LITIGATION.—

19 “(1) MORATORIUM ON LITIGATION.—No person
20 may commence any civil action or assert any claim
21 under this Act seeking recovery of any response
22 costs, or contribution toward such costs, in connec-
23 tion with any response action for which the Presi-
24 dent has initiated an allocation under this section,

1 until 150 days after issuance of the allocator's re-
2 port or of a report under this section.

3 “(2) STAY.—If any action or claim referred to
4 in paragraph (1) is pending on the date of enact-
5 ment of this section or on the date of initiation of
6 an allocation, such action or claim (including any
7 pendant claim under State law over which a court is
8 exercising jurisdiction) shall be stayed until 150
9 days after the issuance of the allocator's report or
10 of a report under this section, unless the court de-
11 termines that a stay will result in manifest injustice.

12 “(3) TOLLING OF LIMITATIONS PERIOD.—Any
13 applicable limitations period with respect to actions
14 subject to paragraph (1) shall be tolled from the ear-
15 lier of—

16 “(A) the date of listing of the facility on
17 the National Priorities List, where such listing
18 occurs after the date of enactment of this sec-
19 tion; or

20 “(B) the commencement of the allocation
21 process pursuant to this section, until 180 days
22 after the President rejects or waives the Presi-
23 dent's right to reject the allocator's report.

24 “(h) EFFECT ON PRINCIPLES OF LIABILITY.—The
25 allocation process under this section shall not be construed

1 to modify or affect in any way the principles of liability
2 under this title as determined by the courts of the United
3 States.

4 “(i) FUND SHARE.—For each removal or remedial
5 action that is the subject of an allocation under this sec-
6 tion, the allocator shall determine the share of response
7 costs, if any, to be allocated to the Fund. The Fund share
8 shall consist of the sum of following amounts:

9 “(1) The amount attributable to the aggregate
10 share of response costs that the allocator determines
11 to be attributable to parties who are not affiliated
12 with any potentially responsible party and whom the
13 President determines are insolvent or defunct.

14 “(2) The amount attributable to the difference
15 in the aggregate share of response costs that the al-
16 locator determines to be attributable to parties who
17 have resolved their liability to the United States
18 under section 122(g)(1)(B) (relating to limited abil-
19 ity to pay settlements) for the removal or remedial
20 action and the amount actually assumed by those
21 parties in any settlement for the response action
22 with the United States.

23 “(3) Except as provided in subsection (j), the
24 amount attributable to the aggregate share of re-
25 sponse costs that the allocator determines to be at-

1 tributable to persons who are entitled to an exemp-
2 tion from liability under subsection (t) or (u) of sec-
3 tion 107 or section 114(c) or 128 at a facility or
4 vessel on the National Priorities List.

5 “(4) The amount attributable to the difference
6 in the aggregate share of response costs that an allo-
7 cator determines to be attributable to persons sub-
8 ject to a limitation on liability under section 107(u)
9 or 107(v) and the amount actually assumed by those
10 parties in accordance with such limitation.

11 “(j) CERTAIN MSW GENERATORS.—Notwith-
12 standing subsection (i)(3), the allocator shall not attribute
13 any response costs to any person who would have been
14 liable under section 107(a)(3) or 107(a)(4) but for the ex-
15 emption from liability under section 107(u)(3).

16 “(k) UNATTRIBUTABLE SHARE.—The share attrib-
17 utable to the aggregate share of response costs incurred
18 to respond to materials containing hazardous substances
19 for which no generator, transporter, or owner or operator
20 at the time of disposal or placement, can be identified shall
21 be divided pro rata among the potentially responsible par-
22 ties and the Fund share determined under subsection (i).

23 “(l) EXPEDITED ALLOCATION.—At the request of the
24 potentially responsible parties or the United States, to as-
25 sist in reaching settlement, the allocator may, prior to

1 reaching a final allocation of response costs among all par-
2 ties, first provide an estimate of the aggregate Fund
3 share, in accordance with subsection (i), and an estimate
4 of the aggregate share of the potentially responsible par-
5 ties.

6 “(m) SETTLEMENT BEFORE ALLOCATION DETER-
7 MINATION.—

8 “(1) SETTLEMENT OF ALL REMOVAL OR REME-
9 DIAL COSTS.—A group of potentially responsible
10 parties may submit to the allocator a private alloca-
11 tion for any removal or remedial action that is with-
12 in the scope of the allocation. If such private alloca-
13 tion meets each of the following criteria, the allo-
14 cator shall promptly adopt it as the allocation re-
15 port:

16 “(A) The private allocation is a binding al-
17 location of at least 80 percent of the past,
18 present, and future costs of the removal or re-
19 medial action.

20 “(B) The private allocation does not allo-
21 cate any share to any person who is not a sig-
22 natory to the private allocation.

23 “(C) The signatories to the private alloca-
24 tion waive their rights to seek recovery of re-
25 moval or remedial costs or contribution under

1 this Act with respect to the removal or remedial
2 action from any other party at the facility.

3 “(2) OTHER SETTLEMENTS.—The President
4 may use the authority under section 122(g) to enter
5 into settlement agreements with respect to any re-
6 sponse action that is the subject of an allocation at
7 any time.

8 “(n) SETTLEMENTS BASED ON ALLOCATIONS.—

9 “(1) IN GENERAL.—Subject to paragraph (2),
10 the President shall accept an offer of settlement of
11 liability for response costs for a removal or remedial
12 action that is the subject of an allocation if—

13 “(A) the offer is made within 90 days after
14 issuance of the allocator’s report; and

15 “(B) the offer is based on the share of re-
16 sponse costs specified by the allocator and such
17 other terms and conditions (other than the allo-
18 cated share of response costs) as are acceptable
19 to the President.

20 “(2) REJECTION OF ALLOCATION REPORT.—

21 The requirement of paragraph (1) to accept an offer
22 of settlement shall not apply if the Administrator
23 and the Attorney General reject the allocation re-
24 port.

25 “(o) REIMBURSEMENT FOR UAO PERFORMANCE.—

1 “(1) REIMBURSEMENT.—The Administrator
2 shall enter into agreements to provide mixed funding
3 to reimburse parties who satisfactorily perform, pur-
4 suant to an administrative order issued under sec-
5 tion 106, a removal or remedial action eligible for an
6 allocation under subsection (b) for the reasonable
7 and necessary costs of such removal or remedial ac-
8 tion to the extent that—

9 “(A) the costs incurred by a performing
10 party exceed the share of response costs as-
11 signed to such party in an allocation that is
12 performed in accordance with the provisions of
13 this section;

14 “(B) the allocation is not rejected by the
15 United States; and

16 “(C) the performing party, in consideration
17 for such reimbursement—

18 “(i) agrees not to contest liability for
19 all response costs not inconsistent with the
20 National Contingency Plan to the extent of
21 the allocated share;

22 “(ii) receives no covenant not to sue;
23 and

24 “(iii) waives contribution rights
25 against all parties who are potentially re-

1 sponsible parties for the response action,
2 as well as waives any rights to challenge
3 any settlement the President enters into
4 with any other potentially responsible
5 party.

6 “(2) OFFSET.—Any reimbursement provided to
7 a performing party under this subsection shall be
8 subject to equitable offset or reduction by the Ad-
9 ministrator upon a finding of a failure to perform
10 any aspect of the remedy in a proper and timely
11 manner.

12 “(3) TIME OF PAYMENT.—Any reimbursement
13 to a performing party under this subsection shall be
14 paid after work is completed, but no sooner than
15 completion of the construction of the remedial action
16 and, subject to paragraph (5), without any increase
17 for interest or inflation.

18 “(4) LIMIT ON AMOUNT OF REIMBURSE-
19 MENT.—The amount of reimbursement under this
20 subsection shall be further limited as follows:

21 “(A) Performing parties who waive their
22 right to challenge remedy selection at the end
23 of the moratorium following allocation shall be
24 entitled to reimbursement of actual dollars
25 spent by each such performing party in excess

1 of the party's share and attributable by the al-
2 locator to the Fund share under subsection (i).

3 “(B) Performing parties who retain their
4 right to challenge the remedy shall be reim-
5 bursed (i) for actual dollars spent by each such
6 performing party, but not to exceed 90 percent
7 of the Fund share, or (ii) an amount equal to
8 80 percent of the Fund share if the Fund share
9 is less than 20 percent of responsibility at the
10 site.

11 “(5) REIMBURSEMENT OF SHARES ATTRIB-
12 UTABLE TO OTHER PARTIES.—If reimbursement is
13 made under this subsection to a performing party
14 for work in excess of the performing party's allo-
15 cated share that is not attributable to the Fund
16 share, the performing party shall be entitled to all
17 interest (prejudgment and post judgment, whether
18 recovered from a party or earned in a site account)
19 that has accrued on money recovered by the United
20 States from other parties for such work at the time
21 construction of the remedy is completed.

22 “(6) REIMBURSEMENT CLAIMS.—The Adminis-
23 trator shall require that all claims for reimburse-
24 ment be supported by—

1 “(A) documentation of actual costs in-
2 curred; and

3 “(B) sufficient information to enable the
4 Administrator to determine whether such costs
5 were reasonable.

6 “(7) INDEPENDENT AUDITING.—The Adminis-
7 trator may require independent auditing of any
8 claim for reimbursement.

9 “(p) POST-SETTLEMENT LITIGATION.—Following
10 expiration of the moratorium periods under subsection (g),
11 the United States may request the court to lift the stay
12 and proceed with an action under this Act against any
13 potentially responsible party that has not resolved its li-
14 ability to the United States following an allocation, seek-
15 ing to recover response costs that are not recovered
16 through settlements with other persons. All such actions
17 shall be governed by the principles of liability under this
18 Act as determined by the courts of the United States.

19 “(q) RESPONSE COSTS.—

20 “(1) DESCRIPTION.—The following costs shall
21 be considered response costs for purposes of this
22 Act:

23 “(A) Costs incurred by the United States
24 and the court of implementing the allocation

1 procedure set forth in this section, including
2 reasonable fees and expenses of the allocator.

3 “(B) Costs paid from amounts made avail-
4 able under section 111(a)(1).

5 “(2) SETTLED PARTIES.—Any costs of alloca-
6 tion described in paragraph (1)(A) and incurred
7 after a party has settled all of its liability with re-
8 spect to the response action or actions that are the
9 subject of the allocation may not be recovered from
10 such party.

11 “(r) FEDERAL, STATE, AND LOCAL AGENCIES.—All
12 Federal, State, and local governmental departments, agen-
13 cies, or instrumentalities that are identified as potentially
14 responsible parties shall be subject to, and be entitled to
15 the benefits of, the allocation process and allocation deter-
16 mination provided by this section to the same extent as
17 any other party.

18 “(s) SOURCE OF FUNDS.—Payments made by the
19 Trust Fund, or work performed on behalf of the Trust
20 Fund, to meet obligations incurred by the President under
21 this section to pay a Fund share or to reimburse parties
22 for costs incurred in excess of the parties’ allocated shares
23 under subsections (e), (m), (n), or (o) shall be funded from
24 amounts made available by section 111(a)(1).

1 “(t) SAVINGS PROVISIONS.—Except as otherwise ex-
2 pressly provided, nothing in this section shall limit or af-
3 fect the following:

4 “(1) The President’s—

5 “(A) authority to exercise the powers con-
6 ferred by sections 103, 104, 105, 106, 107, or
7 122;

8 “(B) authority to commence an action
9 against a party where there is a contempora-
10 neous filing of a judicial consent decree resolv-
11 ing that party’s liability;

12 “(C) authority to file a proof of claim or
13 take other action in a proceeding under title 11,
14 United States Code;

15 “(D) authority to file a petition to preserve
16 testimony under Rule 27 of the Federal Rules
17 of Civil Procedure; or

18 “(E) authority to take action to prevent
19 dissipation of assets, including actions under
20 chapter 176 of title 28, United States Code.

21 “(2) The ability of any person to resolve its li-
22 ability at a facility to any other person at any time
23 before or during the allocation process.

24 “(3) The validity, enforceability, finality, or
25 merits of any judicial or administrative order, judg-

1 ment, or decree issued, signed, lodged, or entered,
2 before the date of enactment of this paragraph with
3 respect to liability under this Act, or authority to
4 modify any such order, judgment, or decree with re-
5 gard to the response action addressed in the order,
6 judgment or decree.

7 “(4) The validity, enforceability, finality, or
8 merits of any pre-existing contract or agreement re-
9 lating to any allocation of responsibility or any in-
10 demnity for, or sharing of, any response costs under
11 this Act.”.

12 **SEC. 308. STANDARD FOR CLEANUP BY DRY CLEANERS.**

13 (a) GENERAL RULE.—The maximum level of remedi-
14 ation for a dry cleaning solvent in the soil, surface water,
15 groundwater, and other environmental media (other than
16 for groundwater or surface water actually used as a drink-
17 ing water source) that any person may require of a dry
18 cleaner shall be equal to the soil screening level for inhala-
19 tion for that dry cleaning solvent determined in accord-
20 ance with the Soil Screening Guidance Document.

21 (b) DEFAULT MAXIMUM REMEDIATION LEVEL.—
22 Until a maximum remediation level is determined for a
23 facility in accordance with subsection (a), the maximum
24 level of remediation of that facility for a dry cleaning sol-
25 vent in the soil, surface water, groundwater, and other en-

1 vironmental media (other than for groundwater or surface
2 water actually used as a drinking water source) that any
3 person may require of a dry cleaner shall be equal to the
4 generic soil screening level for inhalation for that dry
5 cleaning solvent as set forth in the Soil Screening Guid-
6 ance Document.

7 (c) APPLICABILITY TO CERCLA.—The applicable re-
8 quirements for dry cleaning solvents under the Com-
9 prehensive Environmental Response, Compensation, and
10 Liability Act of 1980 shall be the remediation standards
11 established by subsections (a) and (b).

12 (d) CHANGES TO STANDARDS.—The Administrator
13 of the Environmental Protection Agency may, by rule,
14 change the standards of subsections (a) and (b) in accord-
15 ance with the provisions of any revised Soil Screening
16 Guidance Document published after the date of enactment
17 of this Act if necessary to protect human health or the
18 environment.

19 (e) NONPREEMPTION.—Nothing in this section—

20 (1) shall preempt or otherwise prevent the Fed-
21 eral Government or a State government from reme-
22 diating soil, surface water, groundwater, or other en-
23 vironmental media to a level other than the max-
24 imum remediation level determined in accordance
25 with this section if the government determines, on a

1 site-by-site basis, that a more stringent standard is
2 necessary to protect human health or the environ-
3 ment; or

4 (2) shall alter or affect the Federal drinking
5 water standards for public consumption under title
6 XIV of the Public Health Service Act.

7 (f) DEFINITIONS.—For purposes of this section, the
8 following definitions apply:

9 (1) DRY CLEANER.—The term “dry cleaner”
10 means a person who was or is engaged in dry clean-
11 ing or in supplying goods or equipment to such a
12 person or the owner of land on or a facility in which
13 a person was or is conducting dry cleaning

14 (2) PERSON.—The term “person” includes a
15 governmental entity.

16 (3) SOIL SCREENING GUIDANCE DOCUMENT.—
17 The term “Soil Screening Guidance Document”
18 means the Soil Screening Guidance: User’s Guide
19 (EPA/540/R-96/018) and the Soil Screening Guid-
20 ance: Technical Background Document (EPA/540/
21 R-95/128) developed by the Environmental Protec-
22 tion Agency.